

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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FRANCIS M. TOWNSEND, MILON J. TRUM-  
BLE and ALFRED J. GUTZLER, Doing  
Business Under the Firm Name of TRUM-  
BLE GAS TRAP CO.,

Appellants,

vs.

LORRAINE CORPORATION, a Corporation,  
Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

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FILED

MAR 29 1930

PAUL P. O'BRIEN,  
CLERK



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THE  
FEDERAL BUREAU OF INVESTIGATION  
OF THE  
DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

NO. 100-100000

MEMORANDUM FOR THE DIRECTOR

RE: [Illegible]

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

For Appellants:

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FRANK L. A. GRAHAM, Subway Terminal  
Building, Los Angeles, California.

For Appellee:

Messrs. WESTALL and WALLACE (JO-  
SEPH F. WALLACE), 1105 Board of  
Trade Building, Los Angeles, California.

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### CITATION ON APPEAL.

United States of America,—ss.

The President of the United States of America, to  
Lorraine Corporation, a Corporation, GREET-  
ING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, California, thirty (30) days from and after the date this citation bears date, pursuant to order allowing appeal filed in the Clerk's office of the District Court of the United States for the Southern District of California, Central Division, wherein Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler, doing business under the firm name of Trumble Gas Trap Co., are plaintiffs and you are defendant, to show cause, if any there be, why the order rendered against the said appellants, as in

said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable WM. P. JAMES, Judge of the District Court of the United States for the Southern District of California, this 17 day of January, A. D. 1930.

WM. P. JAMES,  
Judge of the District Court of the United States  
for the Southern District of California.

Service of the foregoing citation by copy acknowledged this 18th day of January, 1930.

LORRAINE CORPORATION.  
By WESTALL and WALLACE,  
By JOSEPH F. WESTALL,  
Its Attorneys. [1\*]

Filed Jan. 20, 1930. [2]

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In the District Court of the United States, for the Southern District of California, Central Division.

IN EQUITY—No. Q.-38-M.

FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, Doing Business Under the Firm Name of TRUMBLE GAS TRAP CO.,

Plaintiffs,

vs.

LORRAINE CORPORATION, a Corporation,  
Defendant.

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\*Page-number appearing at the foot of page of original certified Transcript of Record

BILL OF COMPLAINT FOR INFRINGEMENT  
OF LETTERS PATENT No. 1,269,134.

Now come the plaintiffs in the above-entitled suit and, complaining of the defendant above named, allege:

I.

That plaintiffs, Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler, are residents of the county of Los Angeles, State of California, and citizens of said state.

II.

That defendant, Lorraine Corporation, is a corporation organized and existing under the laws of the State of Nevada, and having a regular and established place of business in the county of Los Angeles, within the Southern District of California, Central Division.

III.

That the ground upon which the Court's jurisdiction depends is that this is a suit in equity arising under the patent laws of the United States.

IV.

That heretofore, to wit, on and prior to November 14, 1914, said Milon J. Trumble was the original and first inventor of a certain new and useful invention, to wit, a crude [3] petroleum and gas separator which had not been known or used by others in this country before his invention thereof, nor patented nor described in any printed publication in this or any foreign country before his said invention thereof, or more than two years prior to his

application for a patent, nor was the same in public use or on sale in this country for more than two years prior to his application for a patent in this country and being such inventor, heretofore, to wit, on November 14, 1914, said Milon J. Trumble filed an application in the Patent Office of the United States, praying for the issuance to him of letters patent for said new and useful invention.

#### V.

That prior to the issuance of any patent thereon, said Milon J. Trumble, for value received, by an instrument in writing, sold and assigned to Francis M. Townsend and Alfred J. Gutzler an undivided interest in and to aforesaid new and useful invention and in and to any and all letters patent that might be issued therefor on said application and in and by said assignment requested the Commissioner of Patents to issue said patent to said Milon J. Trumble, Francis M. Townsend and Alfred J. Gutzler, their heirs, legal representatives and assigns, which said assignment in writing was filed in the Patent Office of the United States prior to the issuance of any letters patent on said application.

#### VI.

That thereafter, to wit, on June 11, 1918, letters patent of the United States for the said invention dated on said last-named day and numbered 1,269,134, were issued and [4] delivered by the Government of the United States to the said Milon J. Trumble, Francis M. Townsend and Alfred J. Gutzler, whereby there was granted to Milon J. Trumble, Francis M. Townsend and Alfred J. Gutzler, their

heirs, legal representatives and assigns for the full term of seventeen years from June 11, 1918, the sole and exclusive right to make, use and vend the said invention throughout the United States of America and the territories thereof, and a more particular description of the invention patented in and by said letters patent will more fully appear from the letters patent ready in court to be produced by the plaintiffs.

#### VII.

That the plaintiffs ever since the issuance of said letters patent have been and now are the sole holders and owners of said letters patent and all rights and privileges by them granted, and have under the firm name of Trumble Gas Trap Co. constructed, made, used and sold apparatus containing and embracing and capable of carrying out the invention patented by the said letters patent and upon each of said apparatus have stamped and printed the day and date of and the number of said letters patent and the same have gone into general use.

#### VIII.

That on or about the 3d day of January, 1921, plaintiffs, Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler brought their bill in equity in the Southern District of the United States for the Southern District of California against David G. Lorraine and in said suit complained that the defendant had infringed and threatened further infringement of said letters patent No. 1,269,134; that the said defendant filed his answer to the said bill of complaint; that said cause came on to be

heard on the pleadings and proof and was argued before the Honorable Charles E. Wolverton, District Judge, by counsel for the respective parties and briefs filed therein; that on September 26, 1922, a decree was entered for [5] plaintiffs in said suit adjudging said letters patent good and valid in law, particularly as to claims 1, 2, 3 and 4 thereof; that the said plaintiffs, Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler are the rightful owners of United States patent No. 1,269,134, that defendant had infringed upon the said letters patent, and particularly claims 1, 2, 3 and 4 thereof, and ordering, and adjudging that a writ of injunction issue out of and under the seal of said court directed to said defendant and commanding and enjoining said defendant from infringing upon claims 1, 2, 3 and 4 of said letters patent and ordering an accounting of profits and damages by reason of such infringement; that an appeal was taken by the defendant in that case and heard in due course by the United States Court of Appeals for the Ninth Circuit; that said court on June 4, 1923, rendered an opinion affirming the validity of the patent and finding that said patent was infringed by defendant in said suit. Such opinion of the Circuit Court of Appeals of the Ninth Circuit appearing in Vol. 290 Fed. Rep., at page 54. That during the pendency of the said suit the defendant therein David G. Lorraine transferred his then existing business of manufacturing crude petroleum and natural gas separators to the defendant herein Lorraine Corporation which corporation thereupon became the successor to the said David G. Lorraine in the manufacture



of crude petroleum and natural gas separators, and contributed to and participated in the defense of said suit.

IX.

That on or about the 26th day of April, 1926, the defendant herein sought and plaintiff granted a license to defendant Lorraine Corporation, under patent No. 1,269,134, to manufacture, use and sell gas traps of two specific constructions as illustrated and shown in the two drawings attached to and made a part of said license; that a copy of [6] said license so granted to defendant is attached hereto marked Exhibit "A" and made a part hereof. That since the granting of said license on the 26th day of April, 1926, the defendant Lorraine Corporation, has departed from the constructions therein identified and licensed and has made and sold within the Southern District of California and elsewhere without the license or consent of plaintiffs apparatus described, claimed and patented in and by the said letters patent No. 1,269,134 and has infringed upon said letters patent and particularly upon claims 1, 2, 3 and 4 thereof and intends and threatens to continue so to do.

X.

That by reason of the infringement aforesaid plaintiffs have suffered damages and plaintiffs are informed and believe that the defendant has realized profits but the exact amount of such profits and damages is not known to plaintiffs.

## XI.

That defendant is now continuing carrying on the said infringement upon said letters patent daily and threatens to continue the same, and unless restrained by this Court will continue the same whereby plaintiffs will suffer great and irreparable injury and damage for which plaintiffs have no plain, speedy or adequate remedy at law.

WHEREFORE plaintiffs pray as follows:

## I.

That a final decree be entered in favor of the plaintiffs, Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler, and against the defendant, Lorraine Corporation, perpetually enjoining and restraining the said defendant, its agents, servants, attorneys, workmen and employees and each of them, from using the apparatus described, claimed and patented in and by said letters patent No. 1,269,-134, and from making, using or selling the apparatus described, claimed or [7] patented in and by said letters patent and from infringing upon said letters patent or any of the claims thereof, either directly or indirectly or from contributing to any such infringement.

## II.

That upon the filing of this bill of complaint, or later on motion, a preliminary injunction be granted to the plaintiffs enjoining and restraining the defendant, Lorraine Corporation, its agents, servants, attorneys, workmen or employees, and each of them, until the further order of this court from using the

apparatus described, claimed and patented in and by said letters patent No. 1,269,134, and from making, using and selling the apparatus described, claimed and patented by said letters patent and from infringing upon said letters patent or any of the claims thereof, either directly or indirectly, or from contributing *from* any such infringement.

III.

That plaintiffs have and recover from the defendant the profits realized by the defendant herein, and the damages suffered by the plaintiffs and by reason of the infringement aforesaid, together with the costs of suit, and such other and further relief as to the Court may seem proper, and in accordance with equity and good conscience.

FRANCIS M. TOWNSEND.

MILON J. TRUMBLE.

ALFRED J. GUTZLER,

By MILON J. TRUMBLE.

LYON & LYON

FREDERICK S. LYON.

LEONARD S. LYON.

HENRY S. RICHMOND.

FRANK L. A. GRAHAM. [8]

State of California,

County of Los Angeles,—ss.

Milon J. Trumble, being first duly sworn, deposes and says: That he is one of the plaintiffs named in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof to be true of his own knowledge, ex-

cept as to matters therein alleged on information and belief, and as to those matters, he believes it to be true.

MILON J. TRUMBLE.

Subscribed and sworn to before me this 12th day of September, 1929.

[Seal] MEYER WEISMAN,  
Notary Public in and for the County of Los Angeles,  
State of California.

State of California,  
County of Los Angeles,—ss.

Francis M. Townsend, being first duly sworn, deposes and says: That he is one of the plaintiffs named in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof to be true of his own knowledge, except as to matters therein alleged on information and belief, and as to those matters, he believes it to be true.

FRANCIS M. TOWNSEND.

Subscribed and sworn to before me this 12th day of September, 1929.

[Seal] MEYER WEISMAN,  
Notary Public in and for the County of Los Angeles,  
State of California.

[Indorsed]: Filed Sep. 13, 1929. [9]

EXHIBIT "A."

LICENSE.

WHEREAS, the TRUMBLE GAS TRAP COMPANY, a co-partnership consisting of FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, is the sole and exclusive owner of Letters Patent of the United States, No. 1,269,134, granted on the 11th day of June, 1918, on Crude Petroleum and Natural Gas Separator; and,

WHEREAS, the LORRAINE CORPORATION, a Nevada corporation, is desirous of obtaining a License to manufacture and sell Gas Traps under said Letters Patent.

NOW, THEREFORE, for and in consideration of the sum of Ten (\$10.00) Dollars, to it in hand paid and other good and valuable considerations, the receipt of which is hereby acknowledged, the said TRUMBLE GAS TRAP COMPANY, a co-partnership, hereby grants to the LORRAINE CORPORATION, a Nevada corporation, a non-exclusive License to manufacture and sell Gas Traps under Letters Patent No. 1,269,134 in substantial accordance with those two certain drawings attached hereto and made a part hereof, for the life of said Letters Patent and any reissue thereof throughout the United States, free of any royalty for such manufacture and sale.

This License is subject to the condition that all Gas Traps sold by the parties named herein shall be complete units and that neither party named

herein shall sell parts separate and apart from complete units except as repair or replacement for such complete units.

IN WITNESS WHEREOF, the said TRUMBLE GAS TRAP COMPANY has executed this License this 2nd day of April, 1926.

TRUMBLE GAS TRAP COMPANY,

By F. M. TOWNSEND.

R. O. ADAMS.

L. H. CARPENTER. [10]

[Title of Court and Cause—Cause No. Q-38—M.]

ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE.

To Lorraine Corporation, Defendant Above Named:

Upon reading the verified bill of complaint herein, and the affidavits of William McGraw, Ralph Foster, Milon J. Trumble, and John D. Hackstaff, and upon motion of solicitors for plaintiff,—

IT IS HEREBY ORDERED that you, the above-named defendant, show cause before Honorable Wm. P. James, or one of the Judges of this court, at the courtroom of this court in the Postoffice Building in the city of Los Angeles, State of California, on the 23 day of September, 1929, at ten o'clock A. M. of said day, or as soon thereafter as counsel can be heard, why you should not be enjoined and restrained, as prayed in said bill of complaint, during the pendency of this cause.

IT IS FURTHER ORDERED that the hearing for the said temporary injunction be upon affidavit; that a copy of this order to show cause, and a copy of said bill of complaint and [13] copies of the affidavits of William McGraw, Ralph Foster, Milon J. Trumble, and John D. Hackstaff, be served upon the defendant on or before September 14, 1929; and that the defendant serve and file any showing on its behalf herein on or before September 20, 1929.

Dated at Los Angeles, California, this 13 day of September, 1929.

WM. P. JAMES,  
United States District Judge.

[Indorsed]: Filed Sep. 13, 1929. [14]

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[Title of Court and Cause—Cause No. Q-38—M.]

AFFIDAVIT OF WILLIAM McGRAW.

State of California,  
County of Los Angeles,—ss.

William McGraw, being duly sworn, deposes and says as follows:

That he is forty-two years of age and a resident of Los Angeles, County of Los Angeles, State of California; that he is an employee of plaintiffs in this action, as manager of the said company; that prior to such employment he was employed by the Anglo-Saxon Petroleum Company as manager of the refinery at Shellhaven, England, and prior to such employment was superintendent of construction with the Trumble Refining Company; that he was chief engineer of the plaintiffs herein since 1921; that as part of his duties with the said plaintiffs, he has visited the oil fields of the States of California, Texas and Montana, and the Dominion of Canada, and has examined and become familiar with devices used in the oil fields for the separation of natural gas [15] and oil; that his duties with plaintiff included the inspection and servicing of oil and gas separators in operation in the oil fields;



that he has inspected at various times, as herein more particularly set forth, devices made by the defendant herein for the purpose of separating natural gas and oil, hereinafter referred to as oil and gas separators. That of such devices so examined and with which he is familiar, he has prepared a drawing diagrammatically illustrating various constructions of such gas traps manufactured and sold by defendant, which drawing is attached hereto and made a part hereof, and referred to as Exhibit "A."

That in the spring or summer of the year 1928 he inspected a gas trap, manufactured by the defendant herein and delivered to the Casa Blanco Oil Company at Signal Hill, California, which was constructed as shown on the accompanying print marked Exhibit "A" and particularly identified thereon as Figure 1. That this trap was provided with an inlet opening for discharging from the well into the oil and gas separator a mixture of commingled oil and gas, the inlet opening discharging into a baffle or trough, circular in form, formed on the inner wall of the separator shell and welded thereto, which baffle or trough consisted of an upper and lower and an inner side wall extending approximately two-thirds of the distance around the inner wall of the shell, the discharge end of such baffle or trough being open, the upper and inner wall of such baffle extending approximately two or three inches beyond the lower or bottom wall of the baffle.

That shortly after the examination of the oil and gas separator just described and referred to as Figure 1 on the said Exhibit "A," he examined an oil

and gas separator at the shop of the defendant corporation at Compton, California, together with drawings of said separator exhibited to him by David G. Lorraine, which said gas trap was designed in accordance with a diagrammatic illustration of said Exhibit "A," and marked Figure 2. In [16] this trap the mixture of oil and gas was discharged into the separator through the side wall thereof, into a chamber formed between a vertically extending plate or wall and the side wall of the separator. The gas and entrained vapors rising upwardly from said chamber through an elbow into a baffle, which baffle extended around the inner wall of the shell of the separator and comprised upper, inner and lower circular walls, the lower, or bottom, wall of said baffle or trough being spaced apart from the inner wall of the shell, forming a slot for discharge of accumulated oil in the baffle or trough against the inner wall of the said shell over which the same would flow downwardly in a thin film.

That thereafter, on the 20th and 21st days of August, 1928, he, accompanied by W. A. Doble, Sr., John D. Hackstaff and George Prout, examined an oil and gas separator in the yard of the Shell Oil Company at Signal Hill, California, which separator had attached thereto a plate marked "Lorraine Corporation" and bearing Serial No. 5051B. That such trap so examined was constructed as shown in the diagrammatic drawing marked Figure 3 on Exhibit "A" attached hereto, and was provided with an oil and gas inlet for discharging a mixture of oil and gas from the well into a circular baffle or trough arranged on the inside of the shell, which circular

baffle extended approximately three-quarters of the distance around the shell, the top, side wall and bottom wall of such baffle being closed throughout its length, with the exception that the bottom wall of said baffle adjacent to the inner wall of the shell of the trap was provided with a series of openings cut therein, through which the gas and oil delivered into said baffle would be discharged downwardly into the shell of the trap. The slots cut in the bottom wall of the baffle varied in width from three to four inches from the shell, and were of varying lengths. That the oil and gas separator just [17] described is more particularly illustrated in blueprint attached hereto and marked Exhibit "B." That under ordinary field operations the separator just described would operate as follows: The commingled oil and gas delivered into the runaround baffle would be deflected by this runaround baffle, and the heavier particles, consisting of the oil, would be deposited upon the inner wall of the shell of the separator. The oil so deposited on the inner wall of the shell would flow down the shell in a thin film through the slots in the bottom of the runaround baffle and out of the open end of the runaround baffle, thus allowing the gas to escape outwardly from this film of oil when it was so spread on the inner wall of the shell of the separator.

That on or about the 10th day of January, 1929, he examined an oil and gas separator at the property of the Union Oil Company of California, at the location designated as Howard No. 5, which separator bore the name-plate of the defendant herein, "Lorraine Corporation," together with the notation "Se-

rial No. 7095." That the construction of said separator is illustrated diagrammatically and identified as Figure 4 of Exhibit "A" attached hereto, and as shown therein it was provided with an oil and gas inlet opening which discharged a mixture of oil and gas from a wall into a circular baffle or trough arranged on the inside of the shell, which baffle extended approximately the full circular distance of the shell and was spirally arranged so that the discharge end of said baffle was located immediately under the gas and oil inlet to the trap above referred to. That said baffle was closed as to top, inner wall and bottom wall, with the exception that the bottom wall was discontinued approximately three-quarters of the distance around the trap, the bottom from such point to the discharge or open end of the baffle being open.

That on or about the 12th day of August, 1929, this affiant, accompanied by E. H. Adams, examined an oil and gas separator [18] on the property of the Union Oil Company at Santa Fe Springs on the particular location designated as Bell No. 48, such trap bearing the name-plate of the defendant "Lorraine Corporation," together with the notation "Serial No. 7113M." That said trap was constructed as illustrated diagrammatically in Figure 5 of Exhibit "A" attached hereto, and which construction is described as follows:

This gas and oil separator was provided with an oil and gas inlet opening for discharging a mixture of oil and gas from a well into a circular baffle or trough arranged on the inside of the shell of the separator, which circular baffle or trough ex-

tended to a point approximately two-thirds around the inner wall of the shell of the separator in approximately the same horizontal plane as the inlet opening. That from the end or termination of such horizontal portion, the upper wall of the said baffle dipped downwardly around the inner wall of the shell to a point below the baffle at the gas and oil inlet opening. That the top and inner wall of said baffle was closed throughout and that the bottom wall of said baffle was closed throughout the horizontally arranged portion of said baffle. That from the termination of said flat bottom wall a deflector plate was attached to the inner wall and extended downwardly and outwardly therefrom into contact with the inner wall of the shell of the separator, thereby forming a discharge end for the bottom wall of the baffle, which would, in operation, discharge the oil from the baffle against the inner wall of the shell of the separator. That from the end of such deflector plate to the end of the baffle, the said baffle was open at the bottom.

That the oil and gas separator just described is more particularly shown in that certain print attached hereto and marked Exhibit "C."

That on the same day this affiant, accompanied by the said [19] E. H. Adams, also examined an oil and gas separator on the property of the Union Oil Company of California at Santa Fe Springs, California, and on the location designated as Bell No. 49, which said gas separator bore the name-plate of defendant, "Lorraine Corporation," together with the identification "Serial No. 7099M." That said separator so examined was of the same

general construction as that hereinabove described with reference to Figure 5 of Exhibit "A" attached hereto, with the exception that the baffle extended around the inner wall of the shell in a reverse direction to that shown in Figure 5.

That on or about the 22d day of August, 1929, this affiant, accompanied by E. H. Adams, examined an oil and gas separator on the property of the Union Oil Company at Santa Fe Springs, California, on the location more particularly designated as Farwell No. 13. That said separator bore the name-plate of defendant, "Lorraine Corporation," and bore the identification "Serial No. 7115M." That said separator had been in service and was examined by this affiant and said E. H. Adams at about the hour of ten o'clock A. M. on the morning of August 22, 1929, measurements being taken of the construction of the oil and gas inlet, which construction is as shown in Figure 6 of Exhibit "A" attached hereto. That said separator was provided with a gas and oil inlet which discharged into a circular baffle arranged on the inside of the shell, of the same general form and construction as that shown in Figure 5 of said Exhibit "A" and herein above described, with the exception that the deflector plate was angularly disposed, not only from the inner wall of the baffle toward the inner wall of the shell of the separator, but was also diagonally disposed from the termination of the horizontally disposed portion of the bottom plate of the baffle downwardly toward the open end of said baffle. That the said separator was placed in operation on the same day and was observed in service [20]

operation at or about the hour of two o'clock P. M. of said 22d day of August, 1929, by this affiant and said E. H. Adams; and that the pressure indicator mounted thereon indicated a pressure of between thirty-five and forty pounds per square inch.

That the oil and gas separator just described is more particularly shown in a print attached hereto and marked Exhibit "D."

That this affiant again visited the location, Farwell No. 13, above identified, on the 23d day of August, 1929, and photographed the said separator and portions thereof, including particularly the pressure indicator showing the amount of pressure registered thereon. That the photographs just referred to are attached hereto and marked Exhibits "E" and "F."

Affiant states that from his knowledge of oil and gas separators, based upon his experience gained in their manufacture, and from his observation of gas and oil separators in operation, the commingled oil and gas delivered into the gas and oil separators with baffles built in accordance with the description and the drawings shown in Exhibit "A" hereto, Figs. 1, 4, 5 and 6, respectively, would be delivered from the end of the baffle on to the inner wall of the gas and oil separator, and that such oil so delivered on to the inner wall would travel down thereon in a thin film, allowing the gas to escape therefrom outwardly into the center of the separator, and the oil would flow quietly down and mingle with the body of oil in the bottom of the separator. Affiant further states that he has studied and is familiar with patent No. 1,269,134, patented July

11, 1918; that the baffles constructed as shown in Exhibit "A," Figs. 1, 3, 4, 5 and 6, respectively, perform the same function of spreading the oil in a thin film on the inner wall of the separator substantially in the same manner as do the spreading surfaces of the baffles or cones 22 and 22-a of the Trumble patent in suit. [21]

That affiant has examined and is familiar with those certain prints attached to the license agreement granted by the plaintiffs herein to defendant, and attached to the bill of complaint herein and marked Exhibit "A" to said bill of complaint; that the different forms of baffles shown in Exhibit "A" attached to this affidavit, and marked Figs. 1, 2, 3, 4, 5 and 6, respectively, are different in construction from the oil distributing means shown in the prints attached to the said license agreement.

That affiant has caused to be made, under his personal supervision and direction, models in accordance with the forms of construction shown in Exhibit "A" attached hereto, and numbered Figs. 1, 2, 3, 4, 5 and 6, respectively; that said models are marked, respectively, Exhibits "A-1," "A-2," "A-3," "A-4," "A-5" and "A-6," and are filed herewith as exhibits to this affidavit, and by such reference are made a part of this affidavit; that the several model exhibits are made to scale,  $\frac{1}{4}$  size, from measurements and inspection by affiant of standard separators made by defendant.

WM. McGRAW.

WILLIAM McGRAW.



Subscribed and sworn to before me this 12th day of September, 1929.

[Seal] MEYER WEISMAN,  
Notary Public in and for the County of Los Angeles, State of California.

[Indorsed]: Filed Sep. 13, 1929. [22]

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(Note by CLERK: This same drawing attached to affidavits of Milon J. Trumble, John D. Hackstaff and Ralph Foster as Exhibit "A.")



[Title of Court and Cause—Cause No. Q.-38-M.]

**AFFIDAVIT OF RALPH FOSTER.**

State of California,  
County of Los Angeles,—ss.

Ralph Foster, being first duly sworn, deposes and says: That he is 27 years of age and resides at Long Beach, county of Los Angeles, State of California; that he graduated from the Kansas State Agricultural College in the year 1926 with the degree of mechanical engineer; that he was employed for a period of five months with the C. F. Braum Corporation in the capacity of general workman and finally as inspector of product for foreign trade; that he was employed for a period of one year with the Loomis Oil Well Control Co., in the capacity of designing and field engineer; that since December 1st, 1927, he has been employed by the Shell Company of California at Ventura, California, and Signal Hill, California, as an engineer trainee spending the first six months, of such employment with the Shell Company of California on pipe line work followed by a period of six months in testing crude petroleum and natural gas separators and finally being employed in field work with a well-pulling crew; [29] that during the period of his employment with the Shell Company of California in which he was employed in testing crude petroleum and natural gas separators he tested certain such apparatus manufactured by defendant herein, Lorraine Corporation, made in accordance with types marked Figs. 1, 3 and 4 on that certain print attached

hereto and marked Exhibit "A" as well as modifications of the type marked Fig. 3 on said print Exhibit "A" which were constructed as shown in that certain sketch attached hereto marked Exhibit "B" and that certain print of defendant Lorraine Corporation D-1152 attached hereto marked Exhibit "C"; that with apparatus constructed like Fig. 1 of Exhibit "A" and like Exhibit "B" he observed the interior of such apparatus in operation through peep holes in the side wall of such apparatus and observed that substantially all of the crude petroleum was spread on the inner wall of the shell of the apparatus running downwardly thereover in a thin sheet or film; that in such apparatus of defendant Lorraine Corporation hereinabove designated as Fig. 3 of Exhibit "A" and that constructed like Exhibits "B" and "C" the general construction of the apparatus was substantially the same and that differences consisted in the arrangement, length and width of slots in the lower wall or bottom of the baffle designated on Exhibit "C" as a trough; that in all forms of apparatus constructed with slots or openings in the bottom of the baffle or trough such slots or openings were made in such a manner as to expose an uninterrupted portion of the side wall of the apparatus to receive crude petroleum from the baffle or trough onto such side wall and flow downwardly thereover; that in each construction of crude petroleum and natural gas separator hereinabove referred to oil and gas under pressure is delivered into the baffle or trough and is caused to flow around the baffle or trough against the inner

wall of [30] the apparatus and to be finally delivered to the inner wall of the apparatus over which substantially all of the crude oil flows downwardly in a thin film or sheet without the formation of streams or droplets to the body of oil collected in the bottom of the apparatus.

RALPH FOSTER.

Subscribed and sworn to before me this 3d day of September, 1929.

[Seal]

MEYER WEISMAN,

Notary Public in and for the County of Los Angeles,  
State of California.

[Indorsed]: Filed Sep. 13, 1929. [31]

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EXHIBIT "A."

(Same as Exhibit "A" attached to Affidavit of William McGraw.) [32]

[See page 26, Printed Transcript of Record.]



[Title of Court and Cause—Cause No. Q.-38-M.]

AFFIDAVIT OF MILON J. TRUMBLE.

State of California,  
County of Los Angeles,—ss.

Milon J. Trumble, being first duly sworn, deposes and says: That he is one of the plaintiffs above named; that he is a resident of the city of Alhambra, county of Los Angeles, State of California; that he is the Milon J. Trumble, patentee of United States letters patent No. 1,269,134, for Crude Petroleum and Natural Gas Separator, issued June 11, 1918, which is the patent in suit; that he has been engaged in the oil business since the year 1903, first beginning as a member of a drilling crew in that year and continuing in the drilling department of the oil industry until 1906, when he became a fireman in the Atlas Refinery located at Vernon, California; that he remained a fireman in this refinery until the year 1907, when he became a stillman, in which capacity he remained until 1910; that in the year 1914 affiant became associated with Francis M. Townsend and Alfred J. Gutzler, the other two plaintiffs above [35] named, in the business of manufacturing and selling gas and oil separators, which business has been since that time conducted under the firm name and style of Trumble Gas Trap Company; that since the organization of said copartnership affiant has had supervision of the manufacture of all gas and oil separators manufactured by said copartnership; that affiant is familiar with the gas and oil separator art, as shown by the patented art and also

by the gas and oil separators used in the oil-fields, particularly the oil-fields of the State of California; that affiant is familiar with United States letters patent No. 1,269,134, the patent here in suit.

That attached hereto, marked Exhibit "C," and made a part of this affidavit, is a print No. D-1152, entitled "B-150, Separator, Lorraine Corporation, Los Angeles, Cal.,"; that affiant has examined this print and understands the construction and operation of a gas and oil separator made in accordance with said print; that a gas and oil separator made in accordance with the print, Exhibit "C," and placed in operation in connection with an oil-well, would under ordinary field operations operate as follows:

The commingled oil and gas would enter the gas and oil inlet located near the top of the shell of the separator and be discharged into the runaround baffle which is also located near the top of the shell. The commingled oil and gas thus entering the runaround baffle would be deflected by this runaround baffle, and the heavier particles, consisting of the oil, would be deposited upon the inner wall of the shell of the separator. The oil so deposited on the inner wall of the shell would flow down the shell in a thin film through the slots in the bottom of the runaround baffle and out of the open end of the runaround baffle, thus allowing the gas to escape outwardly from this film of oil when it was so spread on the inner wall of [36] the shell of the separator. The film of oil on the inner wall of the separator, after the gas had escaped therefrom, would collect in the bottom of the separator,



the separator being provided with an oil outlet from the collecting chamber for the oil in the bottom of the separator, and the gas separated from the flowing film of oil collecting in the upper portion of the separator being discharged therefrom through a gas take-off means, such gas take-off means and oil outlet being provided with suitable valves operated in synchronism so that a sufficient body of oil is maintained in the collecting chamber in the bottom of the separator to provide submergence of the oil outlet means therefrom. That an oil and gas separator made in accordance with the print attached hereto, and marked Exhibit "C," would under ordinary field conditions operate under pressure, the print showing a pop safety valve at the top of the separator for the purpose of relieving an undue accumulation of pressure in the separator. The function of this runaround baffle is to slow down the velocity of the incoming oil and gas and is the means for spreading the oil in a film on the inner wall of the shell of the separator, in substantially the same manner as do the baffles or cones 22 and 22-a of the Trumble patent in suit.

That attached hereto and marked Exhibit "A," is a blue-print illustrating six different forms or variations of runaround baffles which affiant is informed and believes the defendant, Lorraine Corporation, has embodied in gas and oil separators like that shown in Exhibit "C," and which said defendant has manufactured, sold and used; that is, such separators being provided with an oil and gas inlet from a flowing well which discharges into a baffle of one of the forms shown on Exhibit "A,"

such separators being provided with a collecting chamber for the oil in the bottom of the separator, an oil outlet means in communication with the body of oil, and a gas outlet means at the top of the shell, the oil and gas outlet means [37] being each provided with valves synchronously operated in such a manner as to maintain a pressure in the separator.

Referring to Fig. 1 of Exhibit "A," this figure discloses a runaround baffle, circular in form, with an inlet opening therein. This baffle is formed on the inner wall of the gas and oil separator shell and welded thereto, and consists of an upper, a lower and a side wall extending approximately two-thirds of the distance around the inner wall of the shell, the discharge end of said baffle being open, the upper and inner wall of said baffle extending approximately two or three inches beyond the lower or bottom wall of the baffle.

Referring to Fig. 2, this figure discloses an oil and gas separator in which the mixture of oil and gas from a well is delivered to the inside of the separator into a chamber formed between a vertically extending plate or wall and the wall of the separator, the gas and entrained oil rising from such chamber upwardly through a nipple into a circular baffle arranged above the oil and gas inlet, such circular baffle extending around the inside wall of the separator, and the lower or bottom wall of such circular baffle beyond said vertically extending wall or plate being formed with an annular slot between such bottom wall and the inner wall of the separator whereby accumulated oil in the baffle would be discharged against the inner wall of the separator

and flow downwardly thereover in a thin film, the gas from such circular baffle passing downwardly through said annular slot and upwardly to the top of the trap from which the same was discharged.

Referring to Fig. 3, this figure discloses a circular baffle for receiving the incoming oil and gas, of the same general form and construction as that disclosed in Exhibit "C" hereto. In such form the circular baffle extends approximately [38] three-quarters of the distance around the inside of the shell, the top, side wall and bottom wall of such baffle being closed throughout its length, with the exception that the bottom wall of said baffle adjacent the inner wall of the shell of the separator is provided with a series of openings therein through which the oil delivered into said baffle is discharged against the inner wall of the separator, as hereinabove more specifically described in connection with Exhibit "C."

Referring to Fig. 4, this figure discloses a form of baffle of substantially the same character as that shown in Fig. 1, with the exception that such circular baffle extends entirely around the inner wall of the shell, being helically arranged so that the outlet end of such baffle is directly under the inlet for the oil and gas, the said baffle being closed as to the top, the inner wall and bottom wall, with the exception that the bottom wall is discontinued at a point approximately three-quarters of the distance around the separator from the inlet opening, the bottom from such point to the discharge or open end of the baffle being open.

Referring to Fig. 5, this figure discloses a circu-

lar baffle arranged on the inside of the shell of the separator which circular baffle extends approximately two-thirds around the inner wall of the shell of the separator in substantially the same horizontal plane as the inlet opening; that from the end or termination of such horizontal portion the upper wall of the said baffle dips downwardly around the inner wall of the shell to a point below the baffle at the gas and oil inlet opening; that the top and inner wall of said baffle is closed throughout, and that the bottom wall of said baffle is closed throughout the horizontally arranged portion of said baffle; that from the termination of said horizontal bottom wall a deflector plate is attached to the inner wall of the baffle and [39] extends obliquely downwardly therefrom into contact with the inner wall of the shell of the separator, thereby forming a discharge end for the bottom wall of the baffle; that from the end of such deflector plate to the end of the baffle, said baffle is open at the bottom.

Referring to Fig. 6, this figure discloses a circular baffle arranged on the inside of the shell of the separator of the same general form and construction as that shown in Fig. 5 of Exhibit "A" hereinabove described, with the exception that the deflector plate is angularly disposed not only from the inner wall of the baffle toward the inner wall of the shell of the separator, but is also diagonally disposed from the termination of the horizontally disposed portion of the bottom plate of the baffle downwardly toward the open end of said baffle.

On August 27, 1929, accompanied by William McGraw of Los Angeles, manager of the Trumble Gas

Trap Company, affiant visited the location of Farwell Well No. 13 of the Union Oil Company at Santa Fe Springs, California, and there observed a Lorraine gas and oil separator in operation under pressure. Affiant was informed and believes that such Lorraine gas trap was constructed with a run-around baffle like that shown in Fig. 6 of Exhibit "A" hereto. At said time and place affiant took photographs of said gas and oil separator from two different positions. Prints of such photographs are attached hereto and marked, respectively, Exhibits "E" and "F," and made a part of this affidavit; Exhibit "E" being taken so as to show the entire separator with its attendant connections; Exhibit "F" being a view of only part of the separator to show the pressure gauge and the identifying data on the side of the separator. Such pressure gauge indicated a pressure within the separator varying from 37 to 45 pounds per square inch, indicating that such separator was working under the pressure indicated upon such gauge.

That oil and gas separators manufactured, sold [40] and used by the defendant, Lorraine Corporation, with runaround baffles as disclosed in Figs. 1, 3, 4, 5 and 6 of Exhibit "A," used in ordinary operation in the oil-fields, would operate as follows: The commingled oil and gas would enter the gas and oil inlet located near the top of the shell of the separator and be discharged into the runaround baffle which is also located near the top of the shell. The commingled oil and gas thus entering the run-around baffle would be deflected by this runaround baffle and the heavier particles, consisting of the oil,

would be deposited upon the inner wall of the shell of the separator in a thin film, thus allowing the gas to escape outwardly from this film of oil when it was so spread on the inner wall of the shell of the separator. The film of oil on the inner wall of the separator after the gas had escaped therefrom would collect in the bottom of the separator, and the gas and oil separator would operate in exactly the same manner as described in this affidavit in connection with the oil and gas separator shown in Exhibit "C" attached hereto. That the cross-sectional area of all of these runaround baffles, Figs. 1, 3, 4, 5 and 6, of Exhibit "A," is substantially greater than the cross-sectional area of the inlet opening into said baffle.

Affiant states that the function of these different runaround baffles, as shown in Figs. 1, 3, 4, 5 and 6 of Exhibit "A," as used in connection with the gas and oil separators by the defendant, Lorraine Corporation, is to slow down the velocity of the incoming oil and gas and is the means for spreading the oil in a thin film on the inner wall of the shell of the separator in substantially the same manner as do the baffles or cones 22 and 22-a of the Trumble patent in suit.

Affiant further states that he is familiar with the license agreement entered into by and between the plaintiffs and the defendant, dated April 26, 1926, and attached to and [41] made a part of the bill of complaint on file herein as Exhibit "A," and with the specific forms or constructions of gas and oil separators shown in the drawings attached to and made a part of such license agreement; that by

the terms of such license agreement defendant, Lorraine Corporation, was specifically restricted to the manufacture, sale and use of gas and oil separators made in accordance with the drawings annexed to said license agreement that gas and oil separators manufactured, sold and used by the defendant embodying the structures shown in Figs. 1-6 of Exhibit "A" hereto and in Exhibit "C" hereto are of different constructions from those disclosed in the drawings attached to said license agreement.

MILON J. TRUMBLE.

Subscribed and sworn to before me this 11th day of September, 1929.

[Seal]

MEYER WEISMAN,

Notary Public in and for Said County and State.

[Indorsed]: Filed Sep. 13, 1929. [42]

## EXHIBIT "A."

(Same as Exhibit "A" attached to affidavit of William McGraw.) [43]

[See page 26, Printed Transcript of Record.]

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EXHIBIT "C."

(Same as Exhibit "C" attached to affidavit of Ralph Foster.) [44]

[See page 37, Printed Transcript of Record.]



[Title of Court and Cause—Cause No. Q.-38-M.]

AFFIDAVIT OF JOHN D. HACKSTAFF.

State of California,  
County of Los Angeles,—ss.

John D. Hackstaff, being duly sworn, deposes and says: That he is a resident of Los Angeles, California, 51 years of age, and his occupation is consulting engineer, with offices at 520 Chapman Building, Los Angeles, California; that he is a graduate of Stevens Institute of Technology, Hoboken, New Jersey, from which he received a degree in mechanical engineering in 1898, and from that time until the present he has practiced his profession of mechanical engineer; that from 1898 to 1906 he was employed by the Rockwell Engineering Company of New York City, designers and builders of furnaces for manufacturing purposes using oil and gas for fuel; that from 1906 until 1913 he was employed by, and was one of the officers of, the Hope Engineering Company of Pittsburgh, Pennsylvania, designing, contracting and consulting engineers specializing in oil and natural gas installations; that during this time he had charge of the outside construction for this [47] concern, installing gas and oil pipe lines and gas and oil pumping-stations; that in this construction gas and oil separators were employed; that from 1913 to 1915 he was general manager of the Midway Gas Company in Los Angeles, California, and had charge of the production and piping of natural gas from the Midway fields to Los

Angeles, and during that time he installed various types of traps and gas and oil separators; that from 1916 to 1921 he was vice-president and general manager of the Empire Pipe Line Company, building and operating oil and gas pipe lines in the mid-continent fields; that from 1921 to the present date he has resided in Los Angeles and practiced his profession of consulting engineer; that he is, and has been for many years, familiar with various kinds of types of traps and gas and oil separators; that he appeared as a witness on behalf of the plaintiff in the suit of Lorraine Corporation vs. Union Tank & Pipe Company, In Equity.—No. M.-16—J., which cause was tried in the District Court of the United States for the Southern District of California before the Honorable William P. James.

That affiant has studied and is familiar with the gas and oil separator art and with the patents issued by the United States Patent Office for gas and oil separators; that he has studied the Trumble patent No. 1,269,134 and is familiar with the disclosures thereof; that he has visited the oil-fields of the Los Angeles basin and has examined traps manufactured by the Lorraine Corporation, and has observed said Lorraine gas and oil separators in operation in said Los Angeles basin; that on December 20 and 21, 1928, affiant, in company with William A. Doble, of San Francisco, and William McGraw, manager of Trumble Gas Trap Company, examined a gas and oil separator in the yards of the Shell Company at Signal Hill, [48] California; that said gas and oil separator so examined at the yards of the Shell Company at Signal Hill,

California, bore the name-plate of the Lorraine Corporation, Serial No. 5051B; that this oil and gas separator consisted of a cylindrical body or shell arranged to receive oil and gas in the upper portion thereof into a runaround baffle near the top of the shell; this runaround baffle was circular in form and extended approximately three-fourths of the way around the shell, and consisted of a top and bottom and an inner side wall, the top and bottom being welded to the inner wall of the shell; the bottom of this runaround baffle was provided with six slots; these slots were adjacent to the inner wall of the shell and extended from the inner wall of said shell to a distance more than one-half the width of said bottom. These slots comprised in length 48 inches of the 90 inches in length of said bottom of said baffle. Attached hereto, and marked Exhibit "D," is a pencil drawing of said runaround baffle, made under the direct supervision of affiant from data collected and measurements made by affiant on the 20th and 21st days of December, 1928.

Attached hereto and marked Exhibit "C" is a (MW.)

~~blue~~ print of an oil and gas separator of the Lorraine Corporation, which (MW.)

~~blue~~ print shows in detail substantially the construction of the Lorraine gas and oil separator, Serial No. 5051B, examined by affiant at the Shell Company yards at Signal Hill. In the operation of this trap, gas and oil from the well would be delivered into the trap through the inlet D into the interior of the run-around baffle. As the flowing stream of com-

mingled gas and oil would be diverted from a straight path by the curvature of the shell, substantially all of the particles of oil would be deposited upon the interior surface of the shell within the runaround baffle. This film of oil in contact with the shell would run down the inner wall of the shell and pass through the cutout openings in the bottom of the baffle and continue to run down the inner wall of the shell to the collecting chamber in [49] the bottom thereof. As the oil would be deposited on and flow down the shell of the separator, the gas would escape outwardly therefrom, and due to its lighter specific gravity travel to the top of the separator into the gas outlet. By this action substantially all of the oil would be deposited in a film upon the inner wall of the shell within the runaround baffle and would emerge in a film on the inner wall of the shell through the slots in the bottom of the runaround baffle. The oil would be collected in the collecting chamber in the bottom portion of the shell. A steel float was mounted in the oil-collecting chamber, and when the oil had reached a predetermined level would begin to open the oil outlet and synchronously start to close the gas outlet. Both the gas and oil outlet valves were so arranged as to be synchronously and inversely operated by this float; the oil valve closing while the gas valve opened, and the gas valve closing when the oil valve opened. By this method of operation the oil outlet would always be submerged in oil.

Attached hereto, and marked Exhibit "A," is a blue-print showing six types of inlet runaround baffles alleged to have been used in connection with

Lorraine gas and oil separators. On the 29th day of August, 1929, accompanied by Henry S. Richmond and E. H. Adams, affiant examined a gas and oil separator located on the property of the Union Oil Company at Santa Fe Springs, at Bell Well No. 49. This gas and oil separator had attached thereto a brass plate upon which was printed the following:

“Lorraine Automatic  
Gas and Oil Separator  
Los Angeles, Cal.  
Patented April 5, 1921  
Nov. 8, 1921  
Patents Pending.  
Serial No. 7099-M.”

This gas and oil separator was built substantially like the gas and oil separator illustrated and shown in Exhibit “C” hereto, with the exception that it had a runaround baffle installed [50] therein like that shown in Fig. 6 of Exhibit “A” hereto. The runaround baffle in this oil and gas separator No. 7099-M was circular in form; the top and inner wall thereof extended around the entire circumference of the shell, the discharge end of the top of the runaround baffle being welded to the bottom of the inlet casting of the runaround baffle. The bottom of this runaround baffle was circular in form and extended substantially parallel with the top for two-thirds of the distance around the shell. From this point the bottom of the runaround baffle was bent downward into a position oblique and directed toward the inner wall of the shell, and the edge that

was welded to the inner wall of the shell was lowered until the bottom of the baffle met the inner wall of the shell at an inclined angle of approximately 30 degrees, the point at which this inclined part of the bottom of the baffle terminated being approximately three-fourths of the way around the shell from the gas and oil inlet; the remainder of the bottom of the baffle being open; the top, inner wall and bottom of the baffle just described was welded together, and the top and bottom thereof securely welded to the inner wall of the shell; the only outlet to this baffle being at the end thereof at the termination of the bottom, which was at a point approximately three-fourths of the way around the shell from the gas and oil inlet.

In operation of this gas and oil separator, Serial No. 7099-M., just described, the oil and gas from the well would be delivered into the oil and gas inlet and would be discharged into the runaround baffle just described, and substantially all the oil particles would be delivered on to the inner wall of the trap, where they would spread out into a film from which the gas would be free to escape into the center of the shell, from whence the gas would be free to rise to the top of the shell and pass out of the gas outlet; and the operation of the gas and oil separator just described would be the same [51] as that described in connection with Exhibits "C" and "D" hereto.

Affiant further states that he has examined Exhibit "A" hereto and understands the construction of the runaround baffles shown in said exhibit. Referring to Fig. 1 of Exhibit "A," this figure dis-

closes a runaround baffle, circular in form, with an inlet opening therein. This baffle is formed on the inner wall of the gas and oil separator shell and welded thereto, and consists of an upper and lower and a side wall extending approximately two-thirds of the distance around the inner wall of the shell, the discharge end of said baffle being open, the upper and inner wall of said baffle extending approximately two or three inches beyond the lower or bottom wall of the baffle.

Fig. 3, as shown in Exhibit "A," is of the same type of runaround baffle as affiant described and explained in his description of Lorraine gas and oil separator, Serial No. 5051-B, above.

Fig. 4 of said Exhibit "A" illustrates a run-around baffle with an oil and gas inlet opening therein. This baffle extends approximately the full circumference of the shell and is helically arranged so that the discharge end of said baffle is located immediately under the gas and oil inlet above referred to. This baffle is closed as to the top and inner wall, and the bottom wall terminates at a point approximately three-quarters of the distance around the trap from the gas and oil inlet.

The runaround baffle illustrated in Fig. 5 is the same as that shown in Fig. 6 and described and explained by affiant in connection with Lorraine gas and oil separator, Serial No. 7099-M, with the exception that the oblique portion of the bottom of the runaround baffle is constructed in two pieces, and the major portion of the oblique bottom meets the inner wall of the shell in a plane perpendicular to the axis of the cylindrical [52] shell instead

of at an angle thereto. In operation a trap constructed with a runaround baffle like Fig. 5 would operate the same as that illustrated in Fig. 6 of Exhibit "A" and like Lorraine gas and oil separator, Serial No. 7099-M, by delivering substantially all of the oil onto the inner wall of the shell in a thin film, allowing the gas to escape therefrom, said oil flowing down the side of said shell into the body of oil below in a thin film, and not in drops and streamlets.

Referring specifically to the runaround baffles illustrated in Figs. 1, 3, 4, 5 and 6 of Exhibit "A" hereto, the cross-sectional area of such runaround baffle is substantially greater than the cross-sectional area of the inlet opening into said baffles.

Affiant states that a Lorraine gas and oil separator made in accordance with the print, Exhibit "C" to this affidavit, and embodying any of the runaround baffles like those shown in Figs. 1, 3, 4, 5 and 6 of Exhibit "A" hereto, would under ordinary field operations operate as follows: The commingled oil and gas would enter the oil and gas inlet located near the top of the shell of the separator and be discharged into the runaround baffle, which is also located near the top of the shell. The runaround baffle being substantially larger in cross-sectional area than that of the inlet opening, the velocity of the commingled oil and gas would be decreased in its travel through the runaround baffle. The commingled oil and gas thus entering the runaround baffle would be deflected by this runaround baffle, and the heavier particles, consisting of the oil, would be deposited upon the inner wall of the



shell of the separator. The oil so deposited on the inner wall of the shell would flow down the shell in a thin film, thus allowing the gas to escape therefrom toward the center of the separator. The film of oil on the inner wall of the separator, after the gas has escaped therefrom, would collect in the bottom of the [53] separator, the separator being provided with an oil outlet from the collecting chamber for the oil in the bottom of the separator, and the gas separated from the flowing film of oil would be discharged from the top of the separator through a gas take-off means, such gas take-off means and oil outlet being provided with suitable valves operating in synchronism so that a sufficient body of oil is maintained in the collecting chamber in the bottom of the separator to provide submergence of the oil outlet means. That the oil and gas separators manufactured and sold by the defendant, Lorraine Corporation, under ordinary field conditions operate under pressure, all of such separators being provided with a pop safety-valve on such separators for the purpose of relieving an undue accumulation of pressure in such separators.

Affiant further states that he has read the Trumble Patent No. 1,269,134 in suit and is familiar with the same; that the function of these runaround baffles, as illustrated in Exhibit "A" hereto, Figs. 1, 3, 4, 5 and 6, is to slow down the velocity of the incoming oil and gas and is the means for spreading the oil in a thin film on the inner wall of the shell of the separator in substantially the same manner

as do the baffles or cones 22 and 22-a of the Trumble patent in suit.

JOHN D. HACKSTAFF.

Subscribed and sworn to before me this 12th day of September, 1929.

[Seal]

MEYER WEISMAN,

Notary Public in and for the County of Los Angeles, State of California.

[Indorsed]: Filed Sep. 13, 1929. [54]

EXHIBIT "A."

(Same as Exhibit "A" attached to Affidavit of William McGraw.) [55]

[See page 26, Printed Transcript of Record.]

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EXHIBIT "C."

(Same as Exhibit "C" attached to Affidavit of Ralph Foster.) [56]

[See page 37, Printed Transcript of Record.]



[Title of Court and Cause—Cause No. Q.-38-M.]

ANSWER TO BILL OF COMPLAINT.

Now comes the defendant in the above-entitled cause and for answer unto the bill of complaint,—

I.

Admits that plaintiffs, Francis M. Townsend, Milton J. Trumble and Alfred J. Gutzler, are residents of the county of Los Angeles, State of California, and citizens of said state.

II.

Admits that defendant, Lorraine Corporation, is a corporation organized and existing under the laws of the State of Nevada, and has a regular and established place of business in the county of Los Angeles, within the Southern District of California, Central Division.

III.

Admits that the ground upon which the court's jurisdiction depends is that this is a suit in equity arising under the patent laws of the United States.

[58]

IV.

Denies that heretofore, to wit, on and prior to November 14, 1914, or at any other time or at all, said Milton T. Trumble was the original and first or any inventor of a certain new and useful invention, to wit, a crude petroleum and natural gas separator, and denies there was any invention in such device and denies that the same had not been known or used by others in this country before

his alleged invention thereof, and denies that the same had not been patented nor described in any printed publication in this or any foreign country before his said invention thereof, or more than two years prior to his application for a patent, and denies that the same was not in public use or on sale in this country for more than two years prior to his application for a patent in this country, but admits that heretofore, to wit, on November 14, 1914, Milon J. Trumble filed an application in the United States Patent Office praying for the issuance to him of letters patent for said alleged new and useful invention.

#### V.

Alleges that this defendant is without knowledge as to whether or not prior to the issuance of any patent on the aforesaid alleged invention said Milon J. Trumble for value received, or at all by an instrument in writing or otherwise sold and assigned to Francis M. Townsend and Alfred J. Gutzler an undivided interest in and to the alleged aforesaid new and useful invention and in and to any and all letters patent that might be issued therefor on any such application and in and by said assignment requested the Commissioner of Patents to issue said patent to the said Milon J. Trumble, Francis M. Townsend and Alfred J. Gutzler, their heirs, legal representatives and assigns, and being without such knowledge on such ground denies each and every of said allegations contained in Paragraph V of said complaint, and for want of knowledge also denies that any such

alleged assignment in writing was [59] filed in the Patent Office of the United States prior to the issuance of any alleged letters patent on said application.

## VI.

Alleges that this defendant is without information and upon such ground denies that thereafter, to wit, on June 11, 1918, or *at other* time or at all, letters patent of the United States for said alleged invention, dated on said last-named day and numbered 1,269,134, were issued and delivered by the Government of the United States to the said Milon J Trumble, Francis M. Townsend and Alfred J. Gutzler, and upon the same ground denies that any sole and exclusive right whatsoever to make, use, and vend the said invention throughout the United States of America and the territories thereof, was granted or issued and this defendant demands *oyer* of said alleged letters patent as proffered in Paragraph VI of said complaint.

## VII.

Alleges that this defendant is without knowledge and therefore denies on such ground that plaintiffs ever since the issuance of said letters patent or at all have been and are now the sole holders and owners of said alleged letters patent and all or any rights and privileges alleged to be granted by them, and upon the same ground and upon want of knowledge also denies that said plaintiffs under the firm name of Trumble Gas Trap Company, constructed, made, used and sold apparatus containing and embracing and capable of carry-

ing out the invention patented by the said letters patent, and upon each of said apparatus have stamped and printed the day and date of and the number of said letters patent and the same have gone into general use, and denies that any such marking as alleged in Paragraph VII of the complaint would be a sufficient marking under the law to give constructive notice to this defendant of the grant and issuance of any such alleged letters patent, and this defendant alleges that plaintiffs have [60] departed from and do not use the alleged invention described in any such pretended letters patent, and that the same is of no utility whatsoever.

#### VIII.

Admits that on or about the 3d day of January, 1921, plaintiffs, Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler brought their bill in equity in the Southern District of the United States for the Southern District of California against David G. Lorraine, and in said suit complained that said defendant had infringed and threatened further infringement of said letters patent No. 1,269,124; that the said defendant filed his answer to said bill of complaint; that said cause came on to be heard on the pleadings and proof and was argued before the Honorable Charles E. Wolverton, District Judge, by counsel for the respective parties, and briefs filed therein; admits that on September 26, 1922, a decree was entered for plaintiffs in said suit adjudging said letters patent good and valid in law, particularly as to claims 1, 2, 3,



and 4 thereof; and that said plaintiffs Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler were the rightful owners of alleged United States letters patent No. 1,269,134; that defendant had infringed upon said letters patent, and particularly claims 1, 2, 3, and 4 thereof, and ordering, and adjudging that a writ of injunction issue out of and under the seal of said Court directed to said defendant and commanding and enjoining said defendant from infringing upon claims 1, 2, 3, and 4 of said letters patent and ordering an accounting of profits and damages by reason of such infringement; admits that an appeal was taken by the defendant in that case and that the same was heard in due course by the United States Circuit Court of Appeals for the Ninth Circuit; and that on June 4, 1923, said court rendered an opinion affirming the validity of the alleged patent and finding that [61] said patent was infringed by defendant in said suit and that such opinion of the Circuit Court of Appeals of the Ninth Circuit appears in Vol. 290 Fed. Rep., at page 54.

Admits that during the pendency of said suit the defendant therein David G. Lorraine transferred his then existing business in the manufacture of crude petroleum and natural gas separators to the defendant herein Lorraine Corporation, which corporation thereupon became the successor to the said David G. Lorraine in the manufacture of crude petroleum and natural gas separators, and continued to and participated in the defense of said suit; but this defendant denies that such decree of Judge Wolverton referred to in Para-

graph VIII of said complaint and above in this answer was affirmed by said Circuit Court of Appeals; but alleges on the contrary that said decree was reversed and alleges that said claims upon such reversal in said opinion were so narrowly construed that only a single separator (referred to in said opinion as Tonner No. 3 Trap) was found to be an infringement of said claims or any of them; and defendant further alleges that it appeared in the record in said cause that there was only a single one of such Tonner No. 3 Traps made and that was made experimentally and was found to be a failure and was without any use thereupon abandoned and consequently that there was no profit or damages derived by said defendant from its experimental use. And this defendant alleges further that such interpretation rendered said patent of practically no value whatsoever and that the same as so construed is void for want of utility, but this matter had never been brought to the attention of the Court of Appeals during the trial of that cause in any adequate manner. Defendant further alleges that thereafter on contempt proceedings in this court said claims were further narrowed and held not to apply to a device which was then the commercial form of separator used by said defendant. [62]

### IX.

Denies that on or about the 26th day of April, 1926, the defendant herein sought and plaintiff granted a license to defendant under said patent 1,269,134, as set forth in paragraph IX of the com-

plaint but admits that on or about the 2d day of April, 1926, plaintiff granted a license to this defendant under said letters patent, to manufacture, use, and sell gas traps of a certain specific construction as illustrated and shown in certain drawings attached to and made part of said license; denies specifically that the defendant ever sought such a license and alleges that the subject matter to manufacture, use and sell, which said license covered, had been prior thereto adjudicated by this court by the Honorable Benjamin F. Bledsoe, as Judge thereof, not to be an infringement of said letters patent even as the same were broadly construed prior to the decision of Judge Wolverton hereinbefore referred to; and defendant alleges that there was no consideration whatsoever for said license and that the same was for want of consideration wholly void and of no legal effect; and defendant further alleges that the forms of trap illustrated in the drawings attached to said license, were in the light of the decision by the Circuit Court of Appeals hereinbefore referred to, clearly non-infringements of any of the claims of said letters patent.

#### X.

Denies that by reason of any infringement as alleged in Paragraph X of the complaint, plaintiffs or any of them have suffered damages and that defendant has realized profits and defendant denies that there has been any infringement whatsoever of said letters patent. [63]

## XI.

Denies that defendant is now or was at the time of the filing of the bill of complaint carrying on any such alleged infringement as referred to in Paragraph XI of said complaint and denies that defendant threatens to continue to infringe and alleges on the contrary that defendant's separators charged to infringe employ an entirely different mode of operation and principle of separation from that forming the alleged essence of invention of said Trumble patent in suit and denies that plaintiffs have cause for complaint whatsoever.

## XII.

And for a separate affirmative defense, defendant,—

Alleges that each and every part, means, or elements, as well as the use, function, and effect thereof (both singly and in divers substantially similar associations of means, apparatus, and processes) of the subject matter described in each and every of the claims of said letters patent number 1,269,134, were, long prior to the alleged invention thereof by the said Milon J. Trumble, matters of common knowledge among those skilled in the art of crude petroleum and natural gas separators (as shown particularly by the letters patent and printed publications hereinafter in this complaint referred to), and that by reason of such general common knowledge the conception, description, and production of the subject matter described in each and every of the claims thereof and particularly claims 1 to 4 inclusive of said letters patent

did not require or involve the exercise of the inventive faculty, and that said letters patent and each and every of the claims thereof and particularly claims 1 to 4 inclusive of said letters patent are null and void for want of invention. [64]

## XIII.

And for a further separate and affirmative defense, defendant,—

Alleges that the subject matter of each and every of the claims and particularly claims 1 to 4 inclusive of said letters patent number 1,269,134, was not novel at the time of the alleged invention, but that, on the contrary, the same has been patented or described in the following letters patent of the United States, being printed publications, prior to the alleged invention and discovery by the said Milon J. Trumble or more than two years prior to his application for a patent therefor;

Name of Patentee.	Number.	Date Granted.
Bra, E. V.	1,014,943,	Jan. 16, 1912,
Barker, A. W.	927,476,	July 13, 1909,
Bougher, J. S.	535,611,	Mar. 12, 1895,
Branch, J. G.	724,254,	Mar. 31, 1903,
Brown, L. W.	968,534,	Aug. 30, 1910,
Cooper, A. S.	815,407,	Mar. 20, 1906,
Gullinan, J. S.	611,314,	Sept. 27, 1898,
Fisher, Chas. E.	1,182,873,	May 9, 1916,
Gray, J. L.	933,976,	Sept. 14, 1909,
Huxley, C. E.	796,429,	Aug. 8, 1905,
McIntosh, G. L.	1,055,549,	Mar. 11, 1913,
Moore, W.	428,399,	May 20, 1890,
Manning, C. E.	445,472,	Jan. 27, 1891,

Name of Patentee.	Number.	Date Granted.
Newbold & Lowry,	689,366,	Dec. 17, 1901,
Newman,	856,088,	June 4, 1907,
Reynolds, W. H.	663,099,	Dec. 4, 1900,
Senter, J. F.	856,549,	June 11, 1907,
Strohbach, F.	1,095,478,	May 5, 1914,
Simpson, W. L.	395,185,	Dec. 25, 1888,
Schlieper, J. E.	768,628,	Aug. 30, 1904,
Shetter, E. P.	249,487,	Nov. 15, 1881,
Saybolt, G. M.	989,927,	Apr. 18, 1911,
Taylor, W. A.	426,880,	Apr. 29, 1890,

[65]

—the specifications and drawings of each of which said letters patent were offered and received in evidence in the cause referred to in paragraph VIII of the complaint herein, on a hearing on the 21st day of December, 1922, of plaintiffs' motion that defendant therein be punished for contempt for alleged violation of an injunction theretofore entered by this court (Judge Wolverton) (of which alleged contempt this defendant was thereafter purged), of which, being already in evidence in said cause, (upon which motion for preliminary injunction herein is largely based), this defendant requests the Court to take judicial notice. And defendant believes, and therefore alleges on information and belief that the same has also been patented and described at the time last aforesaid in various other letters patent or printed publications, the names of which patentees and the dates of their patents and when granted, and the particulars concerning such publications this defendant

has not sufficient information to set forth at the time of filing this answer but which he prays leave to insert by way of amendment when the same shall have been discovered.

#### XIV.

As a further separate affirmative defense defendant,—

Further alleges that the said letters patent #1,269,134, are wholly void and without legal effect, for the reason that the said Milon J. Trumble surreptitiously or unjustly obtained the same for that which was in fact invented by another, namely, by Charles E. Fisher, who was using reasonable diligence in adapting and perfecting the same, and who on the 20th day of November, 1913, approximately a year prior to the pretended invention thereof by the said Milon J. Trumble filed his application for United States letters patent in the United States Patent Office fully disclosing the same and to whom, upon such application letters patent of the United States, Number 1,182,873, were, [66] on the 9th day of May, 1916, granted to the said Charles E. Fisher, evidence concerning which defendant, having heretofore filed and offered in evidence on the 21st day of December, 1922, on the hearing of plaintiffs' motion that defendant in said cause be punished for contempt for alleged violation of the injunction of this court (and of which alleged contempt this defendant was thereafter purged) and which, being already in evidence in

the cause (upon which motion for preliminary injunction herein is based), this defendant requests the Court to take judicial notice.

### XV.

As a further separate and affirmative defense defendant,—

Alleges that the question of whether or not defendant's form of trap illustrated in the drawings attached to said alleged license agreement constitutes an infringement of any of the claims of said letters patent, 1,269,134, has been passed upon and adjudicated in proceedings in this court in cause No. E.-113—Equity, Townsend et al. vs. David G. Lorraine, in which proceedings said defendant in said last-mentioned cause was charged with contempt for violating the injunction theretofore granted, the hearing of which contempt proceedings was had in this court on the 21st day of December, 1922, before the Honorable Benjamin F. Bledsoe, then Judge of this court, and upon which hearing said defendant was thereafter purged of such charge of contempt and said model of gas and oil separator, such as illustrated in the drawings attached to said license agreement, was found not to be an infringement of any of the claims of said letters patent; and that any charge of infringement based upon the assumed infringement by the subject matter covered by said license agreement is *res adjudicata*.

WHEREFORE defendant prays that plaintiffs' bill of complaint be dismissed and that this defend-



ant have judgment [67] against plaintiffs for its costs and disbursements herein.

LORRAINE CORPORATION.

By DAVID G. LORRAINE,  
President.

WESTALL and WALLACE,  
(ERNEST L. WALLACE and JOSEPH F.  
WESTALL),

By JOSEPH F. WESTALL,  
Solicitors and of Counsel for Defendant.

State of California,  
County of Los Angeles,—ss.

David G. Lorraine, being first duly sworn deposes and says, that he is president of defendant Lorraine Corporation and is familiar with all facts and circumstances set forth in the foregoing answer, and that he has read the same and that the same is true of his own knowledge, except as to matters therein stated to be upon information and belief and to those matters he believes it to be true.

DAVID G. LORRAINE.

Subscribed and sworn to before me this 2d day of October, 1929.

[Seal] MARGARET FEENEY,  
Notary Public in and for the State of California,  
County of Los Angeles.

My Commission expires July 2/33.

[Endorsed]: Filed Oct. 2, 1929.

Received copy of the within answer this 2d day of October, 1929.

LYON & LYON,  
HENRY S. RICHMOND,  
Attorneys for Plaintiffs. [68]

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[Title of Court and Cause—Cause No. Q.-38-M.]

NOTICE OF EVIDENCE RELIED UPON IN  
RESPONSE TO ORDER TO SHOW CAUSE  
WHY INJUNCTION SHOULD NOT IS-  
SUE.

To the Above-named Plaintiffs, and to Frederick S. Lyon, Leonard S. Lyon, Henry S. Richmond, and Frank L. A. Graham, Their Attorneys:

You and each of you will please take notice that in response to the order to show cause why preliminary injunction should not issue in the above-entitled cause, the hearing of which has heretofore been set by stipulation and order of Court on the 7th day of October, 1929, defendant files contemporaneously with this notice and will rely upon, their verified answer to the bill of complaint, and the affidavits of David G. Lorraine, E. P. Shaw, and T. D. Boyce, and shall also call to the attention and rely upon the files, records, exhibits and proceedings in Cause No. E.-113—Equity, Townsend et al. vs. David G. Lorraine, and upon the files, records, and proceedings in said last-mentioned cause on appeal being No. 3945 in the United States Circuit Court of Appeals and particularly upon the proceedings in said cause E.-113—Equity in which it

was sought to punish the defendant therein for contempt in the manufacture and sale of said defendant's Model 16 trap, and shall particularly call to the attention of [69] the Court the opinions and decrees entered in all of said proceedings.

Dated this 1st day of October, 1929.

WESTALL and WALLACE,  
(JOSEPH F. WESTALL and ERNEST L.  
WALLACE),

By JOSEPH F. WESTALL,  
Solicitors and of Counsel for Defendant. [70]

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[Title of Court and Cause—Cause No. Q.-38-M.]

AFFIDAVIT OF DAVID G. LORRAINE IN OP-  
POSITION TO MOTION FOR PRELIMI-  
NARY INJUNCTION.

State of California,  
County of Los Angeles,—ss.

David G. Lorraine, being first duly sworn, deposes and says: I am president of the defendant Lorraine Corporation and have been such since the date of its incorporation in May, 1923. Defendant company was incorporated to take over an extensive business in the manufacture and sale of oil and gas separators of the general kind involved in this controversy, which I had, prior to that time, built up. Since such incorporation, I have had full control of the design of gas and oil separators made and sold by defendant, and I am consequently quite familiar

with the details of their construction as well as with their mode of operation.

My active study of the separation of oil and gas and of devices for such purposes began fourteen or fifteen years ago, and for many years preceding the filing of the complaint in this cause I have devoted my time almost exclusively to the endeavor to secure the highest degree of excellence in gas traps for such separation. [71]

As part of such labor I have made a careful and very exhaustive study of every patent granted on oil and gas separators and have expended many thousands of dollars in experimenting with various forms of such devices. I have also built and tried out extensively many different designs of such devices. As a result of such study I have from time to time made what I believed to be important discoveries in the art and have covered the same by letters patent. Among the most important of these patents granted to me are the following:

- 1,373,664, granted April 5, 1921, and its reissue No. 15,220, granted Novem. 8, 1921;
- 1,396,860, granted November 15, 1921;
- 1,577,917, granted March 23, 1926;
- 1,620,771, granted March 15, 1927.

As an important part of this experience I have observed the operation of gas traps in every oil-field in the United States constantly making changes in the design of my said product to meet conditions in the various fields throughout the world and constantly experimenting with various forms and modifications of my trap in order to determine the best manner of producing a product which would be of

universal application. By such study, observation and experimentation I have been able to maintain the rank of defendant company as one of the most important distributors of oil and gas separators in the world. At the present time the Lorraine Corporation sells on an average approximately \$67,000.00 worth of gas traps per month. The prices of such traps range from \$450.00 to \$2,350.00 each.

At some slight preliminary indication of the value of my contributions to this art and to the lack of value of that of the Trumble patent in suit, it is a fact that plaintiffs pay to the Lorraine Corporation, and have paid for several years a substantial royalty for a license under my patents, while neither [72] I nor the defendant company have ever paid to plaintiffs any royalty whatsoever for any license under the patent in suit. It is true that plaintiffs granted to the Lorraine Corporation a license under the Trumble patent in suit, which license is set forth as an exhibit to the bill of complaint herein, but such license was granted, after this court, through Judge Bledsoe, had, on contempt proceedings, adjudicated that the design of trap illustrated in the drawings attached to said license and to which said license was limited, was not within the scope of the Trumble patent in suit, and was not an infringement thereof. The license was granted by plaintiffs without any consideration whatsoever and solely as a device or scheme or means for making it appear to third parties that there was some practicable scope to the Trumble patent in suit, and that it contained certain features of practical value, while the fact was that such patent had been construed in such decisions on contempt and by the

Circuit Court of Appeals to be so narrow as to be worthless in preserving any monopoly or covering any principle of operation that was at all worth covering.

Having been through extensive and expensive litigation respecting the patent in suit I am especially familiar with it, and what is more important I am thoroughly conversant with the manner in which such patent was construed in the various decisions of this court and the Court of Appeals respecting it.

I also know precisely from numerous experiments of various kinds, which have cost me a great deal of money, just exactly how the combined oil and gas will behave inside the separator not only of the Trumble design of trap but of all others, and particularly those involved in the present proceeding.

There were five forms of traps charged to be infringements of the Trumble patent in suit in such former litigation. Only one of these forms was found to be an infringement, the remainder were expressly adjudicated not to be infringements; and [73] from these specific findings and the clear language of the Court's opinion accompanying them, the scope of the Trumble patent has been made clear beyond any possibility of real or substantial controversy.

In order that the Court may clearly and distinctly visualize what has heretofore been found by the Courts not to be infringements of the Trumble patent, I set forth below very clear illustrations. These are accurate in all respects. [74]

As indicated by the labelling of the foregoing illustrations, Model 1 correctly illustrates the construction shown and described in my patent reissue 15,220, and the illustrations following that just above referred to of Model 2 respectively show the trap as it was usually put out, namely, with the—  
L—connection (designated by the numeral 4 on said illustration erroneously referred to in prior proceedings as a “nipple”) in about the center of the oil receiving chamber and the next illustration showing the same alleged “nipple” machined off so as to fit tightly against the partition forming one wall of the oil receiving chamber. It is important to note that each of these drawings are made to scale, and correctly in every respect illustrate the constructions in question, being copies of similar illustrations which were contained in the brief on my behalf before the United States Circuit Court of Appeals, the complete accuracy of which was never questioned.

Subsequent to the decision of the trial court (Judge Wolverton) (afterwards reversed as aforesaid, by the Court of Appeals), I caused the construction of my traps to be changed and got out what was known as Model 16 trap which is fully illustrated in the proceedings on contempt and a model of which will be produced to this affidavit on the hearing of plaintiffs’ motion for injunction.

[78]

There were thus four types of traps strenuously contended in prior proceedings to be infringements of the Trumble patent which have been fully ad-

judicated not to be infringements, namely, the device of my reissued patent 15,220 (referred to in the opinion of Judge Wolverton as Model 1). The two forms of Model 2 above illustrated, one with a nipple machined off to fit tightly against the partition and lastly Model 16 trap.

There was only one form of separator which was found to be an infringement in any prior litigation. The following illustration is a correct drawing, also made to scale, of the only form of separator found to be an infringement of the Trumble patent in suit. This is referred to in the Circuit Court of Appeals' opinion, as Towner No. 3 Trap (correct name as shown by the record is Tonner). [79]



It is difficult to draw the line that separates the finding of noninfringement by the construction of my reissue letters patent 15,220, and the finding of infringement by Tonner No. 3 Trap. The only possible explanation is that the Court believed that in Tonner No. 3 the oil was not splashed but was spread in a thin film over an extended surface down which it flowed. The Court doubtless found in the case of my patent construction, of reissue patent 15,220, that the oil was splashed about and that some of it, although possibly only a small portion, fell to the bottom of the separator in drops or streams, and was not entirely spread out in a thin film, or was spread in a thick uneven layer on the wall of the separator.

I am of course quite familiar with the forms of separators referred to in the affidavit of William McGraw and illustrated in Figs. 1 to 6 of Exhibit "A" to such affidavit. The descriptions of these traps as contained in such affidavit and the illustrations referred to, appear to me to be substantially correct illustrations of traps I have made at about the times and before the times alleged in such affidavit. The explanation as to the mode of operation and the disposition of the mixed oil and gas when it reaches the trap as contained in the McGraw affidavit, is most emphatically erroneous as I am prepared and will be prepared to demonstrate. I have prepared models showing more fully the devices attempted to be illustrated in said Exhibit "A" to the McGraw affidavit, and will present them with this affidavit on the hearing of the order to show cause. All of these alleged infringing traps

referred to in the McGraw affidavit are much further removed from similarity in principle or operation and from being possible infringements of the Trumble patent in suit than those before the Circuit Court of Appeals and before Judge Bledsoe which were expressly found not to infringe. Contrary to the statements contained in said affidavit of William McGraw, in none of [81] such traps (Figs. 1 to 6, inclusive, Exhibit "A," McGraw affidavit) is the oil spread in any thin film on any surface. Some of the oil undoubtedly strikes the vertical wall of the separator in a manner similar to many forms of traps of the prior art but a portion of it will fall to the bottom of the separator without striking the wall and furthermore that which does strike the wall will not be spread out in a thin film but will flow down the wall in irregular heavy streams; in other words will act exactly as does the oil in the models founds by the Circuit Court of Appeals and Judge Bledsoe not to constitute infringements of the Trumble patent in suit. I believe that such fact will be obvious upon inspection, but if the Court is in any manner in doubt, inasmuch as the matter is of very great importance to me and I will be irreparably injured in my goodwill in the sale of traps if the Court should grant the present motion, I shall be glad to go to whatever expense may be necessary to thoroughly demonstrate to the Court or to a commissioner appointed by the Court, that in none of the alleged infringing traps now before the Court, does the oil spread out in a thin film as limited in the Trumble patent in suit.

What the Court of Appeals said in the opinion reversing Judge Wolverton in the case of E.-113—Equity, reported 290 Federal, page 54, in differentiating the device found not to be an infringement by such decision, is obviously equally true of the traps alleged to be infringements on the present motion, namely, Figs. 1 to 6 inclusive of Exhibit “A” of the affidavit of William McGraw. The Court said (top of page 56, 290 Fed.):

“While appellant employs a similar chamber or compression tank together with the element of pressure in the tank, the crude mixture is introduced with greater force than in the Trumble device, and instead of gravitating evenly over the conical spreaders and from them down the chamber walls, the incoming stream is broken up by the inclined bottom or deflecting plate of the patent model, or the bell-shaped nipple, and in part splashed against the chamber wall and partition, the other part falling free into the settling pool. Some of the portion striking the partition-plate and chamber [82] walls doubtless flows down the surfaces to the pool below, and, so flowing in a sort of a sheet, is suggestive of the Trumble process. But the filming is only slight and incidental, and apparently these features of appellant’s apparatus are primarily designed to get the requisite exposure for the escape of gas, by dividing the body of the froth into drops and splashes and streamlets, rather than by spreading it as a sheet or film on a solid backing, and also to guard the settling pool against direct

discharge into it of the incoming stream at a high velocity causing violent agitation and interfering with the separation, by gravitation, of the sand and water from the oil.”

In each of the devices charged to be infringements on the present motion (Figs. 1 to 6, inclusive, except Fig. 2 of Exhibit “A” of the McGraw affidavit) the circular trough inside of the separator is practically a continuation of the oil inlet pipe except the form illustrated in Fig. 3 of said exhibit, which more nearly resembles Model 16 found by Judge Bledsoe not to infringe. The oil flows in the bottom of the trough at a considerable depth and no separation takes place in this oil inlet passage that is of any particular consequence, the only real separation taking place when the oil is discharged into the chamber, constituting the main portion of the trap. The oil then flows from the end of the inlet pipe, some of it no doubt striking the chamber wall and flows down such wall in a stream. The part that does not strike the chamber wall falls directly to the settling pool.

Fig. 2 of Exhibit “A” of the McGraw affidavit illustrates a form of trap which has been adjudicated by the Court of Appeals not to be within the scope of the Trumble patent and not to be an infringement thereof.

The language of the Circuit Court of Appeals in its opinion in the former case about the middle of page 59 of 290 Fed. Reporter, clearly differentiates the forms of device alleged in this present proceeding to be infringements as follows:

“Our conclusion is that, in the light of the prior art and the patentee’s interpretation of his claims in the Patent Office, the claims are to be read only upon apparatus by which substantially the whole body of oil is spread as [83] a film or thin sheet on a backing wall, and is not, in the course of the process of separation, broken up by any means into drops or streamlets; and, if so read, they do not reach the structure exhibited in the drawings of appellant’s patent or in the model identified by the bell-shaped discharge nipple.”

I know from my past experience in litigation involving the Trumble patent in suit that any preliminary injunction which might be granted by this Court will be advertised in every possible way in order to injure the goodwill of defendant as much as possible. To the confusion of the trade and public the real scope of the Trumble patent in suit will be subtly misrepresented in ways impossible of control by the Court. Any bond which may be given by plaintiffs cannot possibly be adequate to cover the resulting irreparable injury which must inevitably follow the issuance of such an injunction, as sought by the present motion.

I have never been secretive about disclosing the construction of the models and designs of my trap. They have been freely advertised and their interior construction shown to prospective purchasers and others, and I have always given full information to plaintiffs concerning their construction and design. This is particularly apparent from the affidavit of

William McGraw, near the bottom of page 6 of said affidavit, where said witness admits, that I exhibited drawings to a representative of plaintiffs showing the trap designated as Fig. 1 of Exhibit "A" of said affidavit. It is to be noted also that McGraw—(page 2, line 11 of the affidavit) admits that he knew of the manufacture and sale by me of the trap of said Fig. 1 in the spring or summer of 1928.

Since that time plaintiffs have permitted me to continue in the business and built up a large and extensive trade in the manufacture and sale of the traps now complained of for over a year and therefore have been guilty of a great and unreasonable delay in calling to the attention of this Court their present alleged rights; which is entirely inconsistent with their present contention, that they [84] are being irreparably injured by my acts in the premises.

The defendant Lorraine Corporation is amply able financially to pay all possible damages which might be finally *be* decreed against them in case infringement should be found. In case of a final decision in favor of plaintiffs in this case, plaintiffs would be entitled to the recovery of a money judgment, but in the event a preliminary injunction should be granted on the present motion, possible recovery on plaintiffs' injunction bond could not repair the injury done to the goodwill of defendant company, and as before stated plaintiffs have waited long before asserting their present alleged rights.

Fig. 3 of the McGraw affidavit was first made by

me prior to July 25, 1928, and with the full knowledge of plaintiffs and without protest from them until the filing of the present suit.

Fig. 6 of the McGraw affidavit was first made by me about September, 1928, and since, and yet there has been no protest by plaintiffs until this suit has been filed. Fig. 2 of the McGraw affidavit is a design that is covered by my patent No. 1,620,771, granted May 26, 1924. The first trap of this design was made by me before the filing date of the application for the patent last referred to that is prior to May 26, 1924, and since, and yet there has been no protest on the part of plaintiffs since the decision of the Court of Appeals until the filing of this suit. I believe that all of the traps which are now complained of were made at least a year prior to the filing of the present suit and there has been no protest by plaintiffs nor claimed that they infringed until this application was made.

In the proceedings on contempt involving Model 16 (which was, as before stated, found by Judge Bledsoe, not to constitute an infringement of the patent in suit) certain apparatus was set up in the yards of the Lacey Manufacturing Company on North [85] Main Street to show what happened to oil when it flowed into and through a trap. At that time Court and counsel were invited to attend a test of the trap and provision was made to observe the inside of the trap during operations. We invited Court or counsel to select their own grade or quality of oil and measure of oil and gas and pressure conditions, but our invitation was declined.

However, we did produce affidavits on said motion fully describing the tests that we had made and illustrating them as far as was possible by accurate photographs. I attached hereto a set of the photographs forming part of our showing in opposition to the motion in contempt proceedings, which will show how the oil will flow out of the end of a pipe and will show clearly that whether the volume is large or small it at no time spreads out on the wall of the separator in anything resembling a film. This showing is particularly pertinent as a demonstration that the form of trap illustrated in the drawings attached to the license agreement set up in the bill of complaint herein, cannot possibly be an infringement of the Trumble patent under any possible interpretation of such patent.

DAVID G. LORRAINE.

Subscribed and sworn before me this 1st day of October, 1929.

[Seal] MARGARET FEENEY,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires July 2/33. [86]



[Title of Court and Cause—Cause No. Q.-38-M.]

AFFIDAVIT OF T. D. BOYCE IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION.

State of California,  
County of Los Angeles,—ss.

T. D. Boyce, being first duly sworn, deposes and says: I reside at 4229 $\frac{1}{4}$  West 28th Street, Los Angeles, California. I am a petroleum engineer with about 25 years of experience. I have had a very wide and extensive experience during that time in all branches of the oil business. I was employed by the Associated Oil Company of California in the central and northern portions of the state 20 years ago doing general work in the engineering line relating to petroleum. During the latter portion of such time I was made manager of the equipment department of the Associated Oil Company at San Francisco.

After leaving the employ of the Associated Oil Company I worked for two small companies in the same general capacity for nearly two years. Shortly after this time I was employed by the Edward L. Doheny interests doing miscellaneous and general engineering work in connection with the petroleum industry having much to do with the handling of the various devices and equipment [91] necessary for the handling of oil which included the drilling of oil-wells. During the past 25 years I have been fully acquainted and very familiar with the construction and mode of operation

of various mechanical aids for oil and gas productions.

I have been familiar with the operation of oil and gas separators to be attached to flowing wells since about 1910, possibly a little later. In those early days there was not much attention paid to the conservation of gas, and large quantities of gas was permitted to go to waste. It has only been since about 1916, at which time the manufacture of casing-head gas became an industry that real conservation of natural gas has attracted any particular attention among oil producers. Previous to that time it was customary to blow gas in the air through two or three inch pipes set fifteen or twenty feet up in the air, and the gas was used to furnish illumination for the camps and leases in general.

I was also employed in the same general capacity, which covered a very wide miscellaneous field necessitating knowledge of all phases of the oil industry by Doheny interests for approximately nine or ten years during which time my duties brought me in intimate contact with all forms of oil-well devices. Since that time I was employed by the Guggenheim interests in Alaska for exploration and development work in the petroleum industry and during which time I had full charge of the drilling of various exploratory wells. Since that time I have followed the profession of an independent petroleum engineer.

I am very familiar with the construction and mode of operation of gas and oil separators, as I have before intimated and particularly those in use at the present time.

I have seen and examined and am familiar with the Trumble patent in suit in the above-entitled cause and I am also familiar with the different forms of such devices made and sold by the defendant Lorraine Corporation and referred to in the affidavit of [92] William McGraw and illustrated in the exhibits attached thereto which I understand are contended to be infringements of the said Trumble patent. I have also examined models of such alleged infringement and I understand perfectly the manner in which such devices operate. I am quite familiar with the manner in which oil behaves when it enters the gas trap. It is usually mixed with gas and the proportions of gas and oil that comes from a flowing well into a trap vary greatly at different wells.

It is not true as stated in affidavits filed on behalf of plaintiffs on the present motion in opposition to which this affidavit is given that any oil entering any of the devices referred to in the McGraw affidavit after reaching the interior of the trap flows in anything which might be properly described as a thin film down the walls of the separator. Most of the oil entering into the main portion of the trap is allowed to fall in streams or drops to the oil level below and while undoubtedly some of such oil will strike the walls of the separator and will flow down thereover, it will flow in a stream of uneven thickness. The principle of separation employed in defendant's trap is not by spreading the oil in any thin film on any solid backing but consists of divid-

ing it up into drops or streams and allowing the separation to take place while so divided.

T. D. BOYCE.

Subscribed and sworn to before me this 1st day of October, 1929.

[Seal] MARGARET FEENEY,  
Notary Public in and for said County of Los Angeles, State of California.

My commission expires July 2/33. [93]

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[Title of Court and Cause—Cause No. Q.-38-M.]

AFFIDAVIT OF E. P. SHAW IN OPPOSITION  
TO MOTION FOR PRELIMINARY  
INJUNCTION.

State of California,  
County of Los Angeles,—ss.

E. P. Shaw, being first duly sworn, deposes and says: I live at 2142 Veteran Avenue, Los Angeles, California, and have had considerable experience in the operation of gas and oil separators since 1920 and I understand fully their mode of operation and effects. I have given very careful attention to the study of the Trumble patent referred to in the bill of complaint in the above-entitled suit and also the patents to Mr. Lorraine mentioned in his affidavit filed contemporaneously herewith and also to a patent granted to George H. Gillon on closely similar construction.

I have examined the various figures 1 to 6 inclusive of Exhibit "A" of the affidavit of William Me-

Graw filed in support of the motion for injunction in the above-entitled cause and have also examined models fully illustrating such construction and I understand fully the same and also the mode of operation of gas traps so constructed. In all the forms immediately above referred to except Fig. 2 the oil enters the circular covered trough which [94] forms practically a continuation of the inlet pipe. The oil is not spread in any thin film inside of the trough, but is merely caused to flow through same covering the bottom thereof to a substantial thickness. There is no real or substantial separation of gas and oil until the oil is discharged into the main chamber of the trap. When it is discharged some of it may strike the wall of the separator and flow downwardly thereover in a stream but a large portion falls directly to the pool of oil in the settling chamber and does not come in contact with said wall and is not in any manner spread in a thin film or any kind of a film on any backing.

These circular troughs of various forms in defendant's trap are merely devices for decreasing velocity so as to permit quiescence in the settling chamber. They have no function of spreading out the oil on any surface of the trap in any film. The principle of separation used in the Lorraine trap complained of and which I have just considered is that of breaking up the oil into streams or drops and permitting some of it to flow in a solid stream on the wall of the separator possibly spread out to some degree, but not in such a form as to be properly designated a film. A large portion of the oil being discharged into the chamber drops directly to

the oil level in the settling chamber without coming in contact with the wall.

E. P. SHAW.

Subscribed and sworn to before me this 1st day of October, 1929.

[Seal] MARGARET FEENEY,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires July 2/33.

[Indorsed]: Filed Oct. 2, 1929.

Received copy of the within notice, etc., this 2d day of October, 1929.

LYON & LYON,  
HENRY S. RICHMOND,  
Attorneys for Plaintiff. [95]

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[Title of Court and Cause—Cause No. Q.-38-M.]

REBUTTAL AFFIDAVIT OF ALFRED J.  
GUTZLER IN SUPPORT OF MOTION  
FOR PRELIMINARY INJUNCTION.

State of California,  
County of Los Angeles,—ss.

I am one of the plaintiffs above named and a member of the copartnership doing business under the firm name of Trumble Gas Trap Company. My attention has been called to certain statements made in the affidavit of David G. Lorraine filed in the above-entitled cause executed October 1, 1929, and particularly to statements appearing at pages 2 and

3 of said affidavit to the effect that the license granted by plaintiffs to the defendant corporation referred to therein was without any consideration whatsoever, etc. These statements are not correct.

The license granted by plaintiffs to defendant Lorraine Corporation under the letters patent in suit, dated April 2, 1926, a copy of which is annexed to the complaint herein, was in consideration of an agreement entered into on even date therewith between David G. Lorraine, defendant Lorraine Corporation and plaintiffs, a true copy of which agreement is annexed [96] hereto as Exhibit "A" to this affidavit. Contemporaneously with the grant of the license by plaintiffs to defendant Lorraine Corporation above mentioned and pursuant to said agreement a license was granted by defendant Lorraine Corporation to plaintiffs under reissue letters patent No. 15,220, a true copy of which license is annexed hereto as Exhibit "B" to this affidavit, and a license was given by David G. Lorraine to plaintiffs under letters patent No. 1,396,860 and No. 1,533,744, a true copy of which is annexed hereto as Exhibit "C" to this affidavit. Each of the licenses so exchanged were fully paid and were given in consideration of the exchange and in further consideration of the agreement constituting Exhibit "A" hereto and the termination of the litigation between the parties therein recited. At the time of this exchange plaintiffs were the defendants in certain litigation mentioned in said agreement and Lorraine was the defendant in certain litigation then pending and in which plaintiffs had been granted permission to file a supplemental bill charging that

defendants then type 16 trap was an infringement of the letters patent involved in the above-entitled suit. The agreement Exhibit "A" and the licenses Exhibits "B" and "C" constituted a valuable consideration in exchange for which plaintiffs granted to defendant Lorraine Corporation the license of April 2, 1926, copy of which is annexed to the bill of complaint in the above-entitled cause. The license agreements Exhibits "B" and "C" to this affidavit were limited to the employment of the patented inventions by plaintiffs in complete units and did not license plaintiffs to supply any parts embodying such inventions for installations in apparatus that the plaintiffs had already sold and placed in installation prior thereto. Each of the licenses constituting Exhibits "B" and "C" hereto and the license annexed [97] as an exhibit to the bill of complaint in the above-entitled cause were fully paid. Plaintiffs have manufactured and installed a very large volume of apparatus under the licenses, copies of which constitute Exhibits "B" and "C" hereto, upon which plaintiffs have paid no royalty to defendant corporation or to David G. Lorraine because each of the three licenses exchanged on April 2, 1926, between the parties as aforesaid were fully paid licenses free of royalty.

Subsequent to the exchange of the aforesaid licenses and on the 24th day of November, 1926, plaintiffs obtained from David G. Lorraine an additional and separate license under letters patent No. 1,533,744, granting to plaintiffs the privilege to install the valve arrangement covered by said letters patent in apparatus that had been manufac-



tured and installed prior to April 2, 1926. A true copy of this license is annexed hereto as Exhibit "D" to this affidavit. In accordance with this license Exhibit "D," plaintiffs have paid \$35.00 upon each of such valve arrangements so made and sold by plaintiffs for addition to previously installed apparatus as provided in said license. These are the only royalties paid by plaintiffs to defendant Lorraine Corporation or to David G. Lorraine and are the royalties referred to in the aforesaid affidavit of David G. Lorraine at page 2, line 29, to page 3, line 2.

I have set forth the above facts to show that the statements contained in the aforesaid affidavit of David G. Lorraine in the above-entitled cause, to wit, that the license granted by plaintiffs was without any consideration whatsoever, etc., are not true and correct.

ALFRED J. GUTZLER.

Subscribed and sworn to before me this 7th day of October, 1929.

[Seal]

MEYER WEISMAN,

Notary Public in and for the County of Los Angeles, State of California. [98]

EXHIBIT "A."

AGREEMENT.

THIS AGREEMENT, entered into this 2nd day of April, 1926, by and between DAVID G. LORRAINE, residing at Compton, and LORRAINE CORPORATION, a Nevada Corporation, hereinafter referred to as first parties, and FRANCIS

M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, co-partners, doing business under the firm name and style of TRUMBLE GAS TRAP COMPANY, having their principal place of business at Los Angeles, California, hereinafter referred to as second parties.

WHEREAS, the parties hereto are and have been engaged in the business of manufacturing and selling apparatus for the separation of oil and gas, commonly known in the trade as Gas Traps, and have been engaged in litigation in the United States Courts, regarding the alleged violation of patent rights owned by the respective parties; and,

WHEREAS, it is the desire of the said respective parties to terminate all pending litigation and to mutually co-operate with a view to protecting the rights of the respective parties hereto.

NOW, THEREFORE, for and in consideration of the mutual covenants herein expressed and the mutual covenant and agreement to execute and exchange licenses under certain patents owned by the respective parties, the basis of such suits hereinabove referred to, the parties hereto agree as follows:

#### I.

In that certain suit entitled Equity No. E.-113-M., in which FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, co-partners, doing business under the firm name and style of TRUMBLE GAS TRAP COMPANY, are Plaintiffs, and DAVID G. LORRAINE is Defendant, it is mutually agreed by and between the par-

ties hereto that a final decree may be entered therein, waiving all profits and damages, each party to pay its own costs and disbursements subsequent to the entry of the interlocutory decree therein.  
[99]

## II.

In that certain suit entitled Equity J-112-H, in which DAVID G. LORRAINE and LORRAINE CORPORATION are Plaintiffs, and in which FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, co-partners, doing business under the firm name and style of TRUMBLE GAS TRAP COMPANY, are defendants, it is mutually agreed by and between the parties hereto that, that certain identified suit, J-112-H, may be, upon motion of either party hereto dismissed with prejudice.

## III.

In that certain suit entitled Equity J-113-M, in which DAVID G. LORRAINE is Plaintiff, and in which FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, co-partners, doing business under the firm name and style of TRUMBLE GAS TRAP COMPANY, are Defendants, it is mutually agreed by and between the parties hereto that, that certain identified suit, J-113-M, may be, upon motion of either party hereto dismissed with prejudice.

## IV.

It is further covenanted and agreed by and between the parties hereto that the respective parties

shall vigorously prosecute infringements of the patents owned by them relating to gas traps and operating mechanism therefor at the sole cost and expense of the party owning such patents, the parties hereto agreeing to co-operate with each other and rendering assistance in the way of data and information.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

D. G. LORRAINE.

LORRAINE CORPORATION.

By D. G. LORRAINE,

President.

TRUMBLE GAS TRAP COMPANY.

By F. M. TOWNSEND. [100]

### EXHIBIT "B."

#### LICENSE.

WHEREAS, the LORRAINE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, is the sole and exclusive owner of reissued Letters Patent of the United States, numbered 15,220, reissued on the 8th day of November, 1921, for Oil, Gas and Sand Separator; and,

WHEREAS, FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, co-partners, doing business under the firm name and style of the TRUMBLE GAS TRAP COMPANY, are desirous of obtaining a license to manufacture

and sell Gas Traps under said reissued Letters Patent.

NOW, THEREFORE, for and in consideration of Ten (\$10.00) Dollars to it in hand paid and other good and valuable considerations, the receipt of which is hereby acknowledged, the said LORRAINE CORPORATION hereby grants to FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, co-partners, doing business under the firm name and style of TRUMBLE GAS TRAP COMPANY, a non-exclusive license to manufacture and sell GAS TRAPS under said reissued Letters Patent No. 15,220 in substantial accordance with that certain drawing attached hereto and made a part hereof embodying a single slide oil and gas control, for the life of said reissued Letters Patent, throughout the United States, free of any royalty for such manufacture and sale.

This License is subject to the condition that all Gas Traps sold by the parties named herein shall be complete units and that neither party named herein shall sell parts separate and apart from complete units except as repair or replacement for such complete units.

IN WITNESS WHEREOF, the said LORRAINE CORPORATION has executed this License this 2nd day of April, 1926.

LORRAINE CORPORATION.

By D. G. LORRAINE,

President.

R. O. ADAMS.

L. H. CARPENTER. [101]



EXHIBIT "C."

LICENSE.

WHEREAS, DAVID G. LORRAINE of Lynwood, California, is the sole and exclusive owner of Letters Patent of the United States, No. 1,396,860, granted on the 15th day of November, 1921, on METHOD AND APPARATUS FOR SEPARATING OIL AND GAS, and Letters Patent of the United States, No. 1,533,744, granted on the 14th day of April, 1925, on OIL AND GAS SEPARATOR, and

WHEREAS, FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, co-partners, doing business under the firm name and style of TRUMBLE GAS TRAP COMPANY are desirous of obtaining a license to manufacture and sell Gas Traps under both of said Letters Patent.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) to me in hand paid and other good and valuable considerations, the receipt of which is acknowledged, I, the said DAVID G. LORRAINE hereby grant to FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, co-partners, doing business under the firm name and style of TRUMBLE GAS TRAP COMPANY, a non-exclusive license to manufacture and sell Gas Traps under said Letters Patent No. 1,396,860, and under said Letters Patent No. 1,533,744, in substantial accordance with that certain drawing attached hereto and made a part hereof embodying a single slide oil and

gas control, for the life of said letters patent, and any reissue thereof, throughout the United States, free of any royalty for such manufacture and sale.

This License is subject to the condition that all Gas Traps sold by the parties named herein shall be complete units and that neither party named herein shall sell parts separate and apart from complete units, except as repair or replacement for such complete units.

IN WITNESS WHEREOF, the said DAVID G. LORRAINE has executed this license this 2nd day of April, 1926.

D. G. LORRAINE,  
President.

Witnesses:

R. O. ADAMS,  
L. H. CARPENTER. [103]



EXHIBIT "D."

AGREEMENT.

THIS AGREEMENT entered into this 24th day of November, 1926, by and between DAVID G. LORRAINE, residing at Lynwood, California, and TRUMBLE GAS TRAP COMPANY, a co-partnership consisting of FRANCIS M. TOWNSEND, MILON J. TRUMBLE and ALFRED J. GUTZLER, having its principal place of business at Los Angeles, California; and

WHEREAS, the parties hereto, under date of April 2, 1926, entered into certain License Agreements referring to the manufacture and sale of Gas Traps including those coming within the terms of Letters Patent No. 1,533,744, issued on the 14th day of April, 1925; and

WHEREAS, it is the intent of the parties to modify such Agreements in so far as the same refer to the manufacture and sale of Single Slide Oil and Gas Control Valves,

NOW, THEREFORE, the parties agree together as follows:

The said DAVID G. LORRAINE hereby grants the TRUMBLE GAS TRAP COMPANY a license to manufacture, sell and install on gas traps sold by TRUMBLE GAS TRAP COMPANY, prior to the execution of the Agreements herein referred to and dated April 2, 1926, Single Slide Oil and Gas Control Valves embodying the inventions set forth in said Letters Patent, upon the following terms and conditions:

The TRUMBLE GAS TRAP COMPANY, for each and every valve installed and sold, shall pay the said DAVID G. LORRAINE the sum of THIRTY FIVE (\$35.00) DOLLARS, the TRUMBLE GAS TRAP COMPANY to account to the said DAVID G. LORRAINE on the 20th day of each month during the life of this Agreement showing the number of such Valves sold by the TRUMBLE GAS TRAP COMPANY during the preceding calendar month, and shall accompany each such statement by payment in full of all money due the said DAVID G. LORRAINE under this Agreement at the time of each such statement.  
[105]

IT IS UNDERSTOOD AND AGREED that the sum of THIRTY FIVE (\$35.00) DOLLARS per value herein agreed to be paid shall not be considered a license fee nor as fixing a license fee for the right to manufacture and sell valves under the said Letters Patent, but is in consideration of the true and faithful performance by the TRUMBLE GAS TRAP COMPANY, and other good and valuable considerations, the receipt of which is hereby acknowledged, under the Agreements of April 2, 1926, hereinabove referred to.

DAVID G. LORRAINE.  
TRUMBLE GAS TRAP COMPANY.  
By F. M. TOWNSEND.  
A. J. GUTZLER.  
M. J. TRUMBLE. [106]

[Title of Court and Cause.—Cause No. Q.-38-M.]

REBUTTAL AFFIDAVIT OF WILLIAM McGRAW  
IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION.

State of California,  
County of Los Angeles,—ss.

I am the William McGraw who executed an affidavit on the 11th day of September, 1929, on file in this cause and as manager of the copartnership Trumble Gas Trap Company, plaintiff above named, have kept informed as to the competitive efficiency of Trumble and Lorraine traps. I have read the affidavit of David G. Lorraine filed in this cause in opposition to the motion for a preliminary injunction, in which Mr. Lorraine states that plaintiffs have at all times had full information concerning the construction and design of the Lorraine traps and have unreasonably delayed in asserting their rights against the infringement complained of in this cause. I find in Mr. Lorraine's affidavit certain statements that are not correct to my knowledge.

When I learned of the manufacture and sale by Lorraine Corporation of gas traps having the constructions illustrated in [107] Figures 1-4 of Exhibit "A" to my affidavit aforesaid, the defendant corporation was then engaged in repeatedly changing the construction of its traps. The details of these variations in constructions were not all known to plaintiffs. When in use in the field, the Lorraine traps are completely enclosed and the

interior thereof cannot be examined. The traps are ordinarily shipped from the factory of the defendant corporation fully assembled. Information received from the defendant regarding the construction and design of its traps could not be relied upon by plaintiffs. Plaintiffs have had no means of knowing that when defendant exhibited a trap to plaintiffs at the defendant's factory, that the interior construction of such trap corresponded to the interior construction of any particular trap in use in the field.

I found that traps of these constructions (Figures 1-4) were not of an efficiency satisfactory to the users. I was advised that in July, 1929, the Union Oil Company returned certain Lorraine traps to the defendant corporation because the efficiency of the traps was not satisfactory. The interior construction of these traps was either changed or new traps supplied to the Union Oil Company in lieu thereof. The traps then exhibited a greater efficiency than any Lorraine traps that I had been familiar with. Accordingly I obtained permission and examined the interior of these traps on the 12th day of August, 1929, as stated in my affidavit aforesaid. If defendant Lorraine Corporation has been making or selling gas traps constructed as illustrated in Figures 5 and 6 of Exhibit "A" to my affidavit aforesaid for over a year as stated in the affidavit of Mr. Lorraine, plaintiffs had had no knowledge of this fact. The first knowledge of plaintiffs that defendant Lorraine Corporation was making or selling such gas traps was obtained by

me as a [108] result of the examinations I made on the 12th day of August, 1929, as stated in my affidavit aforesaid.

The oil companies have found by comparing the competitive efficiencies of the Lorraine and Trumble traps over a period of years, and now know that a gas trap cannot have an efficiency comparable to that of the Trumble trap unless it is so constructed that substantially the whole body of oil is spread as a film or a thin sheet on a backing wall and is not, in the course of the process of separation, broken up by any means into drops or streamlets. That defendant Lorraine Corporation has also found the same to be true is evidenced by the fact that the defendant has been compelled after repeated changes and variations in the construction of its trap to now adopt the construction illustrated in Figures 5 and 6 of Exhibit "A" to my affidavit aforesaid in which the defendant has now embodied a construction which assures such spreading of the oil. The injunction sought by plaintiffs on this motion is directed to gas traps having the construction illustrated in these Figures 5 and 6 and plaintiffs have brought the above-entitled suit and this motion for a preliminary injunction without delay upon learning for the first time that the defendant was manufacturing and selling such types of traps.

WILLIAM McGRAW.

Subscribed and sworn to before me this 8th day of October, 1929.

[Seal] R. S. ZIMMERMAN,  
Clerk U. S. District Court, Southern District of  
California.

By Edmund L. Smith,  
Deputy.

[Indorsed]: Filed Oct. 8, 1929.

Due service and receipt of a copy of the within  
\_\_\_\_\_ is hereby admitted this 8 day of Oct., 1929.

J. F. WESTALL,  
Atty. for \_\_\_\_\_. [109]

\_\_\_\_\_  
[Title of Court and Cause—Cause No. Q.-38-M.]

### STIPULATION FOR USE OF UNCERTIFIED COPIES OF PATENTS.

It is hereby stipulated and agreed by the parties to the above suit by their solicitors that uncertified printed copies of the specifications and drawings of United States letters patent and uncertified photographic prints or copies furnished by the United States Patent Office of any pertinent foreign letters patent may be received in evidence herein, with the same force and effect as the originals or as though duly certified by the Commissioner of Patents, subject, however, to correction by production of originals or duly certified copies if any error be found therein; and that the recitals of the dates therein upon which the applications for such

patents shall purport to be made be deemed *prima facie* proof of the dates of the filing thereof.

Dated this 27th day of September, 1929, Los Angeles, Calif.

LYON & LYON,  
HENRY S. RICHMOND,

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_.

Solicitors and of Counsel for Plaintiffs.

WESTALL and WALLACE,

By JOSEPH F. WESTALL,

Solicitors and of Counsel for Defendant. [110]

[Indorsed]: Filed Oct. 8, 1929. [111]





At a stated term, to wit, the September Term, A. D. 1929, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Saturday, the 21st day of December, in the year of our Lord one thousand nine hundred and twenty-nine. Present: The Honorable WM. P. JAMES, District Judge.

[Title of Cause—Cause No. Q.-38-M.]

MINUTES OF COURT—DECEMBER 21, 1929—  
ORDER DENYING APPLICATION FOR  
TEMPORARY INJUNCTION.

This cause having been heretofore submitted to the Court on motion of plaintiff for temporary injunction, on argument of counsel and written briefs, and the court being now fully advised, hands down its written opinion and orders that application for temporary injunction is denied, and exception is allowed to the plaintiffs. Opinion is filed herein.  
[111D—112]

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[Title of Court and Cause—Cause No. E.-113.]

MEMORANDUM OPINION.

FREDERICK S. LYON, Esq., LEONARD S. LYON, Esq., and FRANK L. A. GRAHAM, Esq., for the Plaintiffs.

JOSEPH F. WESTALL, Esq., for the Defendant.

BLEDSOE, District Judge.—This is an applica-

tion to have the defendant punished as for contempt of an injunctive order issued pursuant to an interlocutory decree rendered by Judge Wolverton sitting for this court. Due to the insistent and unremitting pressure of other causes, particularly criminal, confronting the Court, the determination of the matter has been held in abeyance for a very considerable period. This, however, has not sufficed to prevent the Court from giving the matter the very careful attention of which it is deserving.

Without going into details, because of pressure of other matters demanding consideration, it must suffice to say that I can find no justification for holding the defendant guilty of contempt. Admittedly the only device made by him after the injunctive order was served was Model No. 16. This model was not a colorable adaptation of either of the models held to be infringements by Judge Wolverton, and as a matter of fact, under the evidence presented, was not susceptible of the same criticism indulged by Judge Wolverton with respect to the [113] infringing models, nor susceptible of being classed within the devices covered by the patent. In the course of his opinion Judge Wolverton says, "I am impressed that the patentee is not confined to means causing the oil to flow down the outer wall of the chamber, but that his patent includes any means that will cause the oil to flow down any surface as well, such as a baffle-plate or inner partition of the wall, which is reached after the emulsified oil enters the chamber."

Without indicating any opinion as to whether or not Model 16 is an infringement of the patent

as construed by the Circuit Court of Appeals, 290 Federal, 54, at page 59, I am constrained to hold that it was not a violation of the injunction of Judge Wolverton, and that therefore the proceedings in contempt should be dismissed.

It is so ordered.

June 30th, 1924.

[Indorsed]: Filed Jun. 30, 1924. [114]

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[Title of Court and Cause—Cause No. Q.-38-M.]

OPINION.

Messrs. LYON & LYON, FRANK L. A. GRAHAM,  
and HENRY S. RICHMOND, of Los Angeles,  
California, Attorneys for Plaintiffs.

Messrs. WESTALL and WALLACE, of Los Angeles,  
California, Attorneys for Defendants.

Application is made in this suit for a temporary injunction. Infringement is charged, the patent involved being for an apparatus commonly known as an oil and gas separator. Such devices are in general use in the oil-fields, and serve the purpose of separating and collecting the gas which accompanies the flow of crude oil from producing wells. No detailed description of the process by which the desired result is accomplished need be given. Method and means have been given elaborate attention in decisions made in cases wherein the parties now litigating were before the Court. The Circuit Court of Appeals in *Lorraine vs. Townsend*, 290 Fed. 54, considered the patent of the plaintiff

here, and held that it was valid, although entitled to no claim as of generic or pioneer character. [115]

The patentable invention found was held to affect only the manner in which the oil, upon entering the chamber of the trap, was distributed. The Court determined that the claims of the Trumble patent were valid only when read upon an apparatus "by which substantially the whole body of oil is spread as a film or thin sheet on a backing wall, and is not, in the course of the process of separation, broken up by any means into drops or streamlets. . . ."

In the Trumble device the oil entering the chamber is discharged upon conical spreaders imperforate in surface, which extend near to and entirely around the inner circumference of the shell of the trap. In process of operation, the oil is said to dispose itself in a thin sheet not only over the spreaders, but leaving the spreaders it would reach the sides of the chamber and continue downward, still in a thin sheet, and equally disposed. It is not probable that in actual operation, with fluctuating heads of oil and gas, the thing will work to the degree of perfection which the description just used implies, but it evidently attains some approximation of that condition. The Court of Appeals greatly restricted the finding of the trial Judge made favorable to the Trumble claims, and held that one device only of those exhibited as having been produced by Lorraine, came within the field of infringement. That was Towner (or Tonner) No. 3, as the trap was designated in the record in that case. Reading the decision with the argument for the narrow construction which the Court allowed to the Trum-

ble patent, it would seem that Towner No. 3 trap is a border-land device as measured by the Trumble invention; it comes within the field with little to spare. In that device a baffle-plate is used, and therein is the only similarity of construction of Towner No. 3 and Trumble. The infringing device did not utilize, as Trumble utilized, [116] baffle-plates of extensive surfaces in conjunction with the circular interior surface of the shell as a backing wall upon which to so dispose the oil that it might be rendered into a thin film. Lorraine used only a segment of the wall with one baffle-plate. It should be affirmed, I think, that the extreme range of equivalence possible to be allowed to Trumble was reached in the holding that Towner No. 3 infringed. The Trumble patent is not for any apparatus that will distribute the oil in the oil trap in a thin film upon a backing wall; it is for a device that is as the Trumble patent describes, and one that operates as that does.

If the inlet pipe extended entirely around the inner circumference of the trap shell and was perforated thickly with outlet holes through which the oil would be directly projected against the wall of the shell, so that it formed approximately a continuous film, which would flow down the surface, it could not be contended at all that Trumble's invention was represented in that device. There would be no equivalency except in the result attained. Then, supposing that the feed pipe in another form extended around the inner circumference of the shell, and that outlet apertures directed

at an angle toward the surface of the shell, affected the projection of the oil upon that circular surface, one stream connecting with the other, the whole effect being to cause the oil to run down the inner surface of the shell in a more or less continuous sheet, plainly there would be no infringement of the Trumble patent. These illustrations serve to emphasize the fact that it is the form of apparatus that gives to the Trumble device its distinction and novelty.

In the model which defendant has marketed, the inlet pipe is enlarged after entering the shell of the trap, and prolonged completely around the shell, the opening being against the side of the shell. At the point of opening, the lower wall [117] of the conduit is bent downward and brought to an end, while the inner wall alone is continued some distance further. It is quite plain that the main force of the oil is directed against the inner wall of the shell, and spread upon that wall, the amount of forward spreading being naturally dependent upon the amount of force which propels the stream of fluid. A considerable part of the stream must also drop at and after the point where the lower wall of the conduit is brought to an end.

In my opinion, the apparatus is not reasonably an equivalent of Trumble's use of the oil-spreading baffle-plates. I think to hold differently would be to allow a claim for the broadest kind of equivalents, far beyond that permitted by a fair interpretation of the decision of the Circuit Court of Appeals.

The application for a temporary injunction will be denied. An exception is allowed the plaintiffs.

Dated this 21 day of December, 1929.

WM. P. JAMES,  
U. S. District Judge.

[Indorsed]: Filed Dec. 21, 1929. [118]

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[Title of Court and Cause—Cause No. Q.-38-M.]

PETITION FOR APPEAL.

To the Honorable Judge of Said Court:

The above-named, Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler, doing business under the firm name of Trumble Gas Trap Co., plaintiffs, feeling aggrieved by the order entered in the above-entitled cause on the 21st day of December, 1929, do hereby appeal from said order to the Honorable United States Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the assignments of error filed herewith, and they pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such court in such cases made and provided.

And your petitioners further pray that the proper order relating to the required security to be re-

quired of them be made, all of which is respectfully submitted.

FRANCIS M. TOWNSEND,  
MILON J. TRUMBLE and  
ALFRED J. GUTZLER,

Doing Business Under the Firm Name of  
Trumble Gas Trap Co., Plaintiffs,

By LYON & LYON,  
FREDERICK S. LYON,  
LEONARD S. LYON,  
HENRY S. RICHMOND,  
FRANK L. A. GRAHAM,  
Their Attorneys. [119]

[Indorsed]: Filed Jan. 17, 1930. [120]

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[Title of Court and Cause—Cause No. Q.-38-M.]

#### ASSIGNMENTS OF ERROR.

Now come the above-named plaintiffs, Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler, doing business under the firm name of Trumble Gas Trap Company, and file the following assignments of error upon which they will rely upon the prosecution of the appeal in the above-entitled cause from the order entered and recorded on the 21st day of December, 1929, by this Court denying plaintiffs' application for a temporary injunction.

That the United States District Court for the Central Division of the Southern District of California erred—



1. In denying plaintiffs' application for temporary injunction.

2. In not finding that devices manufactured and sold by defendant made in accordance with Figures 5 and 6 of Exhibit "A" and Exhibits "A-5" and "A-6" to the affidavit of William McGraw were infringements of Claims 1, 2, 3, and 4 of United States letters patent No. 1,269,134.

3. In finding that "The Trumble patent is not for any [121] apparatus that will distribute the oil in the oil trap in a thin film upon a backing wall."

4. In finding that "it would seem that Towner No. 3 trap is a border-land device as measured by the Trumble invention it comes within the field with little to spare."

5. In finding that a considerable part of the stream of oil delivered from the runaround baffle of Figures 5 and 6 of Exhibit "A" must also drop at and after the point where the lower wall of the conduit is brought to an end.

6. In finding "the apparatus is not reasonably an equivalent of Trumble's use of the oil-spreading baffle-plates."

7. In stating that to find defendant's device reasonably an equivalent of Trumble's oil-spreading baffle-plates "would be to allow a claim for the broadest kind of equivalents, far beyond that permitted by a fair interpretation of the decision of the Circuit Court of Appeals."

8. In finding that "If the inlet pipe extended entirely around the inner circumference of the trap

shell and was perforated thickly with outlet holes through which the oil would be projected against the wall of the shell so that it formed approximately a continuous film which would flow down the surface it could not be contended at all that Trumble's invention was represented in that device."

9. In finding, "Then, supposing that the feed pipe in another form extended around the inner circumference of the shell and that outlet apertures directed at an angle towards the surface of the shell effected the projection of the oil upon that circular surface one stream connecting with the other, the whole effect being to cause the oil to run down the inner surface of the shell in a more or less continuous sheet, plainly there would be no infringement of the Trumble patent." [122]

10. In finding "that it is the form of apparatus that gives to the Trumble device its distinction and novelty."

11. In not finding that devices manufactured and sold by defendant like Figures 5 and 6 of Exhibit "A" to the affidavit of William McGraw come within the scope of Claims 1, 2, 3 and 4 of the patent in suit No. 1,269,134, as defined by the Court of Appeals of the Ninth Circuit in the case of *Lorraine vs. Townsend* reported in 290 Federal Reporter, at page 54 et seq.

12. In not finding that the runaround baffles of the devices manufactured and sold by the defendant, like Figures 5 and 6 of Exhibit "A" to the affidavit of William McGraw, were such apparatus by which substantially the whole body of oil is spread as a film or thin sheet on a backing wall and is not, in

the course of the process of separation, broken up by any means into drops or streamlets.

WHEREFORE appellants pray that said order be reversed and that said District Court of the Central Division for the Southern District of California be ordered to enter an order vacating its order denying plaintiffs' application for a temporary restraining order and that it enter an order granting to plaintiffs a temporary injunction in this cause as prayed in the bill of complaint.

FRANCIS M. TOWNSEND,  
MILON J. TRUMBLE,  
ALFRED J. GUTZLER,

Doing Business Under the Firm Name of Trumble  
Gas Trap Company,

By FREDERICK S. LYON,  
Solicitor for Said Plaintiffs.

LYON & LYON,  
FREDERICK S. LYON,  
LEONARD S. LYON,  
HENRY S. RICHMOND,  
FRANK L. A. GRAHAM,

Solicitors and of Counsel for Plaintiffs.

[Indorsed]: Filed Jan. 17, 1930. [123]

[Title of Court and Cause—Cause No. Q.-38-M.]

NOTICE OF APPEAL.

To Lorraine Corporation, Defendant Herein, and to  
Westall & Wallace, its Attorneys of Record:

You will please take notice that Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler, doing business under the firm name of Trumble Gas Trap Co., plaintiffs and appellants herein, appeal from the order entered herein on the 21st day of December, 1929, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated January 17th, 1930.

FRANCIS M. TOWNSEND,  
MILON J. TRUMBLE and  
ALFRED J. GUTZLER,

Doing Business as TRUMBLE GAS TRAP CO.,

By LYON & LYON,

FREDERICK S. LYON,

LEONARD S. LYON,

HENRY S. RICHMOND,

FRANK L. A. GRAHAM,

Their Attorneys.

Service of the above and foregoing notice acknowledged this 18th day of January, 1930.

WESTALL and WALLACE.

By JOSEPH F. WESTALL,

Attorneys for Defendant.

[Indorsed]: Filed Jan. 20, 1930. [124]

[Title of Court and Cause—Cause No. Q.-38-M.]

ORDER ALLOWING APPEAL.

On motion of Lyon & Lyon, Frederick S. Lyon, Leonard S. Lyon, Henry S. Richmond and Frank L. A. Graham, solicitors and of counsel for plaintiffs,—

IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order filed and entered herein on the 21st day of December, 1929, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

IT BEING FURTHER ORDERED that the bond on appeal be fixed in the sum of Two Hundred and Fifty (\$250.00) Dollars.

Dated this 17 day of January, 1930.

WM. P. JAMES,  
United States District Judge.

[Indorsed]: Filed Jan. 17, 1930. [125]

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[Title of Court and Cause.—Cause No. Q.-38-M.]

STIPULATION RE ORIGINAL EXHIBITS.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto,

through their respective attorneys, that in making up the transcript of appeal herein the Clerk of the above-entitled court make up said transcript of record in accordance with the praecipe heretofore filed by plaintiffs appellants herein, with the following additions herein set forth:

1. It is stipulated and agreed by and between the parties hereto that the exhibits attached to the bill of complaint shall be included in plaintiffs' praecipe calling for a copy of the bill of complaint.

2. That the exhibits attached to and made a part of the affidavits filed September 13, 1929, be made a part of said affidavits as called for by plaintiffs' praecipe, excepting that the physical exhibits consisting of six models filed with said affidavits shall be transmitted by said Clerk to the Clerk of the Court of Appeals to be used by the parties hereto at the hearing in the Court of Appeals.

3. That the verification of the answer of defendant be contained in the answer called for by plaintiffs' praecipe.

4. That the stipulation for the use of uncertified copies of patents, dated September 27, 1929, be included in the record of appeal. [126]

5. That the exhibits and illustrations contained in the affidavit of David G. Lorraine, filed on October 2, 1929, be included in said affidavit as called for by plaintiffs' praecipe.

6. That copies of letters patent to Shetter, No. 249,487, and Fisher, No. 1,182,873, be included in said record on appeal.

7. That memorandum of opinion rendered by Judge Bledsoe June 30, 1924, in contempt proceed-

ings involving Model 16 in cause No. E.-113—Equity, Townsend vs. Lorraine, be made a part of the record on appeal. And in that connection, it is hereby stipulated by and between the parties hereto that the Clerk is instructed to make a copy of said memorandum opinion and include the same in said record on appeal.

IT IS FURTHER STIPULATED that each of the parties hereto on the hearing on appeal may refer to and quote from any part of the record on appeal in No. 3945 in the United States Circuit Court of Appeals, and in so far as it is necessary to a full determination of this matter on appeal, said printed transcript of record in case No. 3945 shall be considered by the Court of Appeals as a part and portion of this record on appeal.

IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto that the Clerk of the above-entitled court shall not make the praecipe of defendant, heretofore filed on January 22, 1930, a part and portion of said record on appeal.

IT IS FURTHER STIPULATED that the Clerk of said court shall make this stipulation a part of said record on appeal.

Dated this 5th day of February, 1930.

LYON & LYON,  
FREDERICK S. LYON,  
LEONARD S. LYON,  
HENRY S. RICHMOND,  
FRANK L. A. GRAHAM,

Attorneys for Plaintiffs-Appellants.

WESTALL and WALLACE,  
By JOSEPH F. WESTALL,  
Attorneys for Defendant-Appellee.

The foregoing stipulation is approved, and it is so ordered.

WM. P. JAMES,  
District Judge. [127]

[Indorsed]: Filed Feb. 6, 1930. [128]

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[Title of Court and Cause—Cause No. Q.-38-M.]

STIPULATION RE MAKING UP OF TRAN-  
SCRIPT ON APPEAL.

WHEREAS, the blue-print Exhibit "A" to the affidavit of William McGraw is the same blue-print as Exhibit "A" to the affidavits of Milon J. Trumble, John D. Hackstaff and Ralph Foster; and

WHEREAS, the blue-print Exhibit "C" to the affidavit of Ralph Foster is the same blue-print that is Exhibit "C" to the affidavits of Milon J. Trumble and John D. Hackstaff,—

NOW, THEREFORE, it is hereby stipulated and agreed by and between the parties hereto that in making up the record on appeal, to be certified to the Clerk of the Court of Appeals for the Ninth Circuit, that only one copy of such Exhibit "A," to wit, that attached to the affidavit of William McGraw, need be certified to said Clerk of the Circuit Court of Appeals, and that the Clerk of the above-entitled court be instructed to approximately mark such Exhibit "A" to the affidavit of William



McGraw showing that said Exhibit "A" is also the same drawing as that attached to the affidavits of Milon J. Trumble, John D. Hackstaff and Ralph Foster as Exhibit "A"; and that only one copy [129] of such Exhibit "C," to wit, that attached to the affidavit of Ralph Foster, need be certified to said Clerk of the Circuit Court of Appeals, and that the Clerk of the above-entitled court be instructed to appropriately mark such Exhibit "C" to the affidavit of Ralph Foster showing that said Exhibit "C" is also the same drawing as that attached to the affidavits of Milon J. Trumble and John D. Hackstaff as Exhibit "C."

IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto that this stipulation be made a part of the record on appeal.

Dated at Los Angeles, California, this 13th day of February, 1930.

LYON & LYON,  
FREDERICK S. LYON,  
LEONARD S. LYON,  
HENRY S. RICHMOND,  
FRANK L. A. GRAHAM,  
Attorneys for Plaintiffs.  
WESTALL and WALLACE,  
By JOSEPH F. WESTALL,  
Attorneys for Defendant.

[Indorsed]: Filed Feb. 13, 1930. [130]

[Title of Court and Cause—Cause No. Q.-38-M.]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler, doing business under the firm name of Trumble Gas Trap Company, in the city of Los Angeles, county of Los Angeles, State of California, principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Lorraine Corporation, defendant in the above styled and numbered cause, in the sum of Two Hundred and Fifty (\$250.00) Dollars, lawful money of the United States, to be paid to it and its successors and assigns; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our successors and assigns by these presents.

Executed and dated this the 14th day of January, A. D. 1930.

WHEREAS, the above-named Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler, doing business under the firm name of Trumble Gas Trap Company, has prosecuted an appeal to the Honorable United States Circuit Court of Appeals for the Ninth Circuit to reverse the order denying an injunction of the [131] District Court for the Southern District of California in the above-entitled cause,—

NOW, THEREFORE, the condition of this obligation is such that if the above-named Francis M.

Townsend, Milon J. Trumble and Alfred J. Gutzler, doing business under the firm name of Trumble Gas Trap Company, shall prosecute their said appeal to effect and answer all costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

ALFRED J. GUTZLER.

MILON J. TRUMBLE.

FRANCIS M. TOWNSEND.

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND.

By VAN R. KELSEY,

Attorney-in-fact.

[Seal]

Attest: LUCILE VAN BOLT,

Agent.

State of California,  
County of Los Angeles,—ss.

On this 14th day of January, 1930, before me, O. B. Kemp, a notary public, in and for the county and state aforesaid, duly commissioned and sworn, personally appeared Van R. Kelsey and Lucile Van Bolt, known to me to be the persons whose names are subscribed to the foregoing instrument as the attorney-in-fact and agent respectively of the Fidelity and Deposit Company of Maryland, and acknowledged to me that they subscribed the name of Fidelity and Deposit Company of Maryland thereto as principal and their own names as attorney-in-fact and agent, respectively.

[Seal]

O. B. KEMP,

Notary Public in and for the State of California,  
County of Los Angeles.

I hereby approve the foregoing bond dated the 17 day of Jan., 1930.

WM. P. JAMES,  
Judge.

[Indorsed]: Filed Jan. 17, 1930. [132]

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[Title of Court and Cause—Cause No. Q.-38-M.]

**PRAECIPE FOR TRANSCRIPT OF RECORD.**

To the Clerk of the Above-entitled Court:

Please prepare a transcript of record for the United States Circuit Court of Appeals for the Ninth Circuit upon which the appeal heretofore taken by plaintiffs from the order entered by the above-entitled court on the 21st day of December, 1929, denying plaintiffs' application for temporary injunction in the above case, shall be heard, including therein the following documents, to wit:

- (1) Bill of complaint.
- (2) Order to show cause why preliminary injunction should not issue.
- (3) Affidavit of William McGraw, filed September 13, 1929.
- (4) Affidavit of Ralph Foster, filed September 13, 1929.
- (5) Affidavit of Milon J. Trumble, filed September 13, 1929.
- (6) Affidavit of John D. Hackstaff, filed Sept. 13, 1929.
- (7) Answer of defendant.

- (8) Affidavit of T. D. Boyce, filed October 2d, 1929.
- (9) Affidavit of E. P. Shaw, filed October 2d, 1929.
- (10) Affidavit of David G. Lorraine, filed Oct. 2d, 1929.
- (11) Notice of evidence relied upon in response to order to show cause why injunction should not issue, filed October 2d, 1929. [133]
- (12) Affidavit of Alfred J. Gutzler, filed Oct. 8, 1929.
- (13) Affidavit of William McGraw, filed October 8, 1929.
- (14) Minute order denying plaintiffs' application for preliminary injunction, entered December 21, 1929.
- (15) Opinion of Court, filed December 21, 1929.
- (16) Petition for order allowing appeal.
- (17) Assignments of error.
- (18) Notice of appeal.
- (19) Order allowing appeal.
- (20) Bond on appeal.
- (21) Citation.
- (22) Patent in suit.
- (23) This praecipe for transcript of record.

Dated this 18th day of January, 1930.

Respectfully submitted,  
LYON & LYON,  
FREDERICK S. LYON,  
LEONARD S. LYON,  
HENRY S. RICHMOND,  
FRANK L. A. GRAHAM,  
Attorneys for Plaintiffs.

[Indorsed]: Filed Jan. 20, 1930.

Due service and receipt of a copy of the within  
— is hereby admitted this 18th day of Jan. 1930.

WESTALL & WALLACE,  
By JOSEPH F. WESTALL,  
Atty. for ————. [134]

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[Title of Court and Cause—Cause No. Q.-38-M.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing transcript, containing pages 1 to 134, inclusive, to be the transcript on appeal in the above-entitled cause, and that the same has been compared and corrected by me and contains the original citation, and a full, true and correct copy of the original bill of complaint, order to show cause, affidavit of William McGraw, filed September 13, 1929, affidavit of Ralph Foster, affidavit of Milon J. Trumble, affidavit of John D. Hackstaff, answer, notice of evidence relied upon in response to order to show cause, affidavit of David G. Lorraine, affidavit of T. D. Boyce, affidavit of E. P. Shaw, rebuttal affidavit of Alfred J. Gutzler, rebuttal affidavit of William McGraw, filed October 8, 1929, stipulation for use of uncertified copies of patents, copies of patents Nos. 1,269,134-249,487 and 1,182,873, minute order denying plaintiffs' application for pre-

liminary injunction, memorandum opinion in case No. E.-113.—In Equity, opinion, petition for appeal, assignments of error, notice of appeal, order allowing appeal, stipulation *re* exhibits, stipulation regarding the making up of the transcript on appeal, cost bond on appeal, and praecipe for transcript of record.

I DO FURTHER CERTIFY the fees of the Clerk for copying, comparing and certifying the foregoing record on appeal amount [135] to \$37.25, and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this 15th day of February, in the year of our Lord one thousand nine hundred and thirty, and of our Independence the one hundred and fifty-fourth.

[Seal]

R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America in and for the Southern District of California.

By Edmund L. Smith,  
Chief Deputy Clerk. [136]

[Endorsed]: No. 6076. United States Circuit Court of Appeals for the Ninth Circuit. Francis M. Townsend, Milon J. Trumble and Alfred J. Gutzler, Doing Business Under the Firm Name of Trumble Gas Trap Co., Appellants, vs. Lorraine Corporation, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Central Division.

Filed February 17, 1930.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.